



Analysis of the Finance Bill, 2024

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Background

The Finance Bill, 2024 (“The Bill”), was tabled to the National Assembly on 13 May 2024 for the first reading.

The proposals in the Bill are likely to have a significant impact on stakeholders if implemented as it is.

In this Tax Alert, we analyse changes proposed by the Bill and the potential implications.

As always do share with us your thoughts and inputs for submission through the public participation process.





Corporate tax

General definition of terms

| Issue | Current Provision | Proposed provision | Our comments |
|---|--|---|---|
| <p>Expanded definition “Digital Content Monetization”</p> <p>w.e.f 1st July 2024</p> | <p>The definition covers offering for payment entertainment, social, literal, artistic, educational or any other material electronically such as through websites, brand sponsorship, affiliate marketing, subscription and membership services, crowd funding for content creators.</p> | <p>The Finance Bill, 2024 (The Bill) proposes to also cover the following under digital content monetization;</p> <p>j. creative works k. Creating or sharing of the material l. Any other material that is not exempt under this act</p> | <p>▶ Expands the scope of the definition of digital content monetization to net more creatives in the digital sphere</p> |
| <p>Definitions</p> <p>“Individual retirement fund” “pension fund” “provident fund”</p> <p>w.e.f 1st July 2024</p> | <p>The ITA defines an “Individual retirement fund”, “pension fund”, “provident fund” in part to mean funds that have been registered with the Commissioner.</p> | <p>The Bill proposes to delete the words “where the funds have been registered with the Commissioner” from the definitions and introduce that registration of the funds shall be with the Retirement Benefits Authority.</p> | <p>▶ The removal of the requirement to register with the Commissioner aligns with current practice where the individual retirement fund, pension fund and provident fund only achieve registration with the retirement benefit authority.</p> |
| <p>Clean up and refinement of terms</p> <p>w.e.f 1st July 2024</p> | <p>The ITA includes definitions on the scope of a “wife’s income” in various provisions.</p> | <p>The Bill, proposes to delete various references to “wife’s incomes”.</p> | <p>▶ The proposed changes are intended to harmonise terminology across the ITA as well as having operational legislation in place.</p> |

General Definition of Terms

| Issue | Current Provision | Proposed provision | Our comments |
|--------------------------------|---|---|---|
| Definition of "Royalty" | <p>"royalty" means a payment made as a consideration for the use of or the right to use –</p> <p>(a) the copyright of a literary, artistic or scientific work; or</p> <p>(b) a cinematograph film, including film or tape for radio or television broadcasting; or</p> <p>(c) a patent, trademark, design or model, plan, formula or process; or</p> <p>(d) any industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific equipment or experience, and gains derived from the sale or exchange of any right or property giving rise to that royalty;</p> | <p>The definition of royalty has been expanded to include the following;</p> <p>a) Any software, proprietary or off-the-shelf, whether in the form of license, development, training, maintenance or support fees and includes the distribution of the software</p> | <ul style="list-style-type: none">▶ The proposal is seemingly fueled by the decision from 2021 at the High Court case of Seven Seas Technologies where the revenue authority lost its pursuit to collect WHT on distribution of software.▶ In arriving at its decision the High Court agreed that royalties are not chargeable on distribution of software as this is considered a copyrighted –article.▶ In our view, the proposal goes against guidance in Article 12 of OECD Model Tax Convention which provides that tax shall apply on royalty payments where there is exploitation rights assigned to the user. |

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1st July 2024

General Definition of Terms

| Issue | Current Provision | Proposed provision | Our comments |
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| Definition “Donation” w.e.f 1st July 2024 | Previously did not exist | Donations means a benefit in money in any form, promissory note or a benefit in kind conferred on a person without any consideration | <ul style="list-style-type: none"> ▶ This is a welcome change to properly define what a donation is and to remove any ambiguity ▶ The changes are set to align the act with the draft income tax (donations and charitable organisations exemption) rules, 2023 which are awaiting gazettelement. |
| Definition “Public Entity” w.e.f 1st July 2024 | Previously did not exist | “public entity means a ministry, state department, state corporation, county department or agency of the national or county government | <ul style="list-style-type: none"> ▶ This is a welcome change to properly define what a public entity is for income tax purposes and to remove any ambiguity on what institutions fall under the definition. |
| Definition “Digital marketplace” w.e.f 1st July 2024 | “digital marketplace” means an online platform which enables users to sell or provide services, goods or other property to other users. | Digital marketplace means an online or electronic platform which enables a person to seller provide goods, property or services including- <ul style="list-style-type: none"> a) Ride-hailing services b) Food-delivery services c) Freelance services d) Professional services e) Rental services f) Task-based services and g) Any other service that is not exempt from tax under this Act | <ul style="list-style-type: none"> ▶ Expands the scope of the definition of digital marketplace to enlarge the scope of services that are liable to tax and the definitions are more specific to provide surety regarding what exactly is a digital marketplace |

Capital Gains Tax

| Issue | Current Provision | Proposed provision | Our comments |
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| <p>Transfer of title of immovable property to a family trust is subject to Capital Gains Tax</p> <p>w.e.f 1st July 2024</p> | <p>Previously exempt</p> | <p>The bill proposes to levy capital gains tax on the transfer of property to a family trust</p> | <p>▶ These provisions seeks to make such transfers subject to Capital Gains Tax.</p> |
| <p>Transfer of property within a special economic zone</p> <p>w.e.f 1st July 2024</p> | <p>Currently provides for exemption to any person in an SEZ</p> | <p>The bill proposes to make Transfer of property within a special economic zone to a licensed SEZ developer, operator and enterprise CGT exempt</p> | <p>▶ This restricts the exemption to only be enjoyed by licensed SEZ Operator, Developer and Enterprise.</p> |



Withholding Tax

| Issue | Current Provision | Proposed provision | Our comments |
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| Income from digital market place w.e.f 1st July 2024 | Previously did not exist | <p>The bill proposes to introduce withholding taxes on digital payment facilitated by digital market place owners or operators as follows:</p> <p>Where a resident or a non-resident person, being the owner or operator of a digital marketplace or platform, makes or facilitates payment in respect of digital content monetisation, goods, property or services, the amount thereof shall be deemed to be income which accrued in or was derived from Kenya.</p> <p>A platform has been defined to mean a digital platform or website that facilitates the exchange of a short-term engagement, freelance or provision of a service, between a service provider, who is an independent contractor or freelancer, and a client or customer</p> | <p>▶ The Bill proposes to introduce WHT of 5% and 20% for resident and non-residents, respectively, who are making or facilitating payment over a digital market-place. This would affect various players within a digital market place. Currently, no withholding tax applies on sellers of goods and services on a digital market place.</p> |
| wht on supply of goods to public entities w.e.f 1st July 2024 | Previously did not exist | A public entity shall withhold 3% and 5% to resident and non-residents respectively, on payments for supply of goods. | <p>▶ In order to enhance collection and monitoring of taxes from traders making supplies to public entities, the Bill has introduced withholding tax of 3% and 5% to residents and non-residents respectively.</p> |
| Infrastructure Bonds and Green Bonds exempt from income tax w.e.f 1st July 2024 | The ITA exempts incomes on Infrastructure Bonds with a maturity of at least 3 years. | The Bill proposes that the exemption shall only apply to interest income accruing from bonds, notes or other similar securities used to raise funds for infrastructure and other social services listed before the commencement of the proviso and other such Infrastructure Bonds and Green Bonds issued post coming to effect of the proviso. | <p>▶ Withholding tax is proposed to be chargeable at 5% and 15% on interest earned by residents and non-residents respectively. This proposal seeks to increase government collections.</p> |
| Removal of WHT threshold of KES 24,000 w.e.f 1st July 2024 | The ITA provides that WHT shall apply to certain payments made to residents such as management/professional fees, in excess of KES 24,000. | The Bill proposes to remove the threshold of KES. 24,000 for payments such a management/professional fees made to residents. | <p>▶ This proposal seeks to increase government collections.</p> |

Employment Tax

| Issue | Current Provision | Proposed provision | Our comments |
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| Income not subject to tax in the hands of the public officers | Does not exist | The Bill proposes to exempt reimbursement of expenses incurred in asset purchase in the course of official duties by public officers. | <ul style="list-style-type: none"> ▶ This provision was introduced by FB 2023 but was never effected. ▶ However, we note the proposal seeks to reintroduce the provision where any reimbursements made to a public officer will be excluded from tax in regard to use of assets owned or controlled or acquired in connection with their official duties. In our view, where assets are acquired, there is a need to introduce a mechanism that allows for the reverting of the assets ownership to the public entities funding acquisition of the assets. |
| Increased non-taxable benefits in kind w.e.f 1st July 2024 | The value of non-taxable benefit upto thirty-six thousand are tax deductible any amount above that is not. | The value of non-taxable benefit upto forty-eight thousand are tax deductible any amount above that is not. | <ul style="list-style-type: none"> ▶ This provision seeks to increase the value of non-taxable benefits that employees can receive from Ksh 36,000 to Ksh 48,000 in line with the current increase of the cost of living |
| Increase of meal benefit to employees w.e.f 1st July 2024 | Currently the value of non-taxable meals served to employees upto forty eight thousand per year are tax deductible any amount above that is taxable. | The bill proposes to increase the value of non-taxable meal benefits served to employees to sixty thousand per year. | <ul style="list-style-type: none"> ▶ This is a welcome relief as the previous limit did not factor in current times and the increased cost of living. |
| Increased per diem w.e.f 1st July 2024 | Currently the first Ksh 2,000 per day paid to an employee when outside their usual place of work while on official duty (per diem) is treated as reimbursement of expenses and is exempt from tax any amount after that is taxable where no supporting documents are provided. | The bill proposes to exempt amounts paid to an employee outside their usual place of work while on official duty (per diem) and the amounts do not exceed 5% of the employee's gross earnings | <ul style="list-style-type: none"> ▶ In our view, more guidelines need to be issued to define what constitutes an acceptable policy for payment and accounting of allowances. Additionally, the proposed threshold may be discriminatory to lower-income earners as it reduces the non-taxable amount for those earning below a certain threshold. ▶ To address this, we propose that the exempt allowance bracket be graduated based on salary bands to ensure fairness and accommodate different income levels proportionately. |

Employment Tax



| Issue | Current Provision | Proposed provision | Our comments |
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| Increased pension relief , retirement, provident fund and NSSF contribution | pension & provident fund are deductible allowances upto kes 240,000 per annum or Kes 20000 per month | The bill proposes to increase the pension & provident fund reliefs upto KES 360,000 per annum or Kes 30,000 per month | ► The proposal seeks to encourage a saving culture for retirement purposes and also increases tax relief. |
| w.e.f 1 ST July 2024 | | | |
| Exemption of pension benefits in special circumstances | Monthly pension granted to a person who is over sixty-five years of age, or more is currently exempt | The proposal seeks to extend the exemption to those who choose to retire early due to health challenges or attainment of twenty years after registration | ► We note this provision seeks to extend the exemptions on pension income by taking into consideration special considerations such as ill health that forces one to retire early. |
| w.e.f 1 ST July 2024 | | | |

Corporate Tax

| Issue | Current Provision | Proposed provision | Our comments |
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| <p>Reduced period for claimable deferred realized foreign exchange loss</p> <p>w.e.f 1st July 2024</p> | <p>(ii) the foreign exchange loss shall be deferred (and not taken into account) and claimed over a period of not more than five years from the date the loss was realized by a person whose gross interest paid or payable to a non-resident person exceeds thirty per cent of the person's earnings before interest, taxes, depreciation, and amortization in any year of income;</p> | <p>(ii) the foreign exchange loss shall be deferred (and not taken into account) and claimed over a period of not more than three years from the date the loss was realized by a person whose gross interest paid or payable to a non-resident person exceeds thirty per cent of the person's earnings before interest, taxes, depreciation, and amortization in any year of income;</p> | <p>► We note that this proposal was introduced last year's FB 2023 however it was never effected. The current wording of the proposal is too ambiguous and open to interpretation, and we recommend that it is amended to specify losses that have been realized from foreign loans and not all business loans as currently worded.</p> |
| <p>Taxation of income received from a public entity</p> <p>w.e.f 1st July 2024</p> | <p>Previously did not exist</p> | <p>The payment received by a person from a public entity for the supply of goods shall be deemed to be the income of the person for the year of income in which payment is received.</p> | <p>► We note the proposal allows entities to recognize the income when it is paid.</p> |

Corporate Tax



| Issue | Current Provision | Proposed provision | Our comments |
|---|---------------------------------|--|--|
| <p>Motor Vehicle Tax(MVT)</p> <p>1st January 2025</p> <p>w.e.f</p> | <p>Previously did not exist</p> | <p>The provision seeks to introduce section 12H where there will be a tax payable on motor vehicle at the time of issuance of insurance cover.</p> <p>The tax is payable at the rate of 2.5% of the value of the motor vehicle subject to a minimum of ksh 5,000 and a maximum of Ksh 100,000.</p> <p>The value of a motor vehicle shall be determined on the basis of the make, model, engine capacity and year of manufacture.</p> <p>The tax is payable at the point of issuance of an insurance cover and should be remitted by insurance companies within 5 working days of issuance.</p> <p>Any insurer who fails to remit the tax is liable to pay the actual amount of the tax and a penalty of 50% of the uncollected tax.</p> <p>The Commissioner is empowered to come up with guidelines to determine the valuation of motor vehicles</p> | <p>▶ This is a new tax targeted at vehicle owners whose effect is to increase the cost of ownership of the vehicle.</p> <p>▶ In our view, the proposed introduction of Section 12H, which mandates a 2.5% motor vehicle tax on the value of motor vehicles at the time of insurance issuance, should be reconsidered. Motor vehicles already face multiple levies, including advance tax on commercial vehicles. Introducing an additional tax at the point of insurance issuance imposes a significant financial burden on vehicle owners, and importantly transport logistics service providers who often already grapple with substantial tax credits from advance taxes</p> <p>▶ The Commissioner is expected to issue guidelines on the valuation procedure to enable the calculation of MVT.</p> |

Corporate Tax

| Issue | Current Provision | Proposed provision | Our comments |
|---|--|---|--|
| <p>Expansion of tax deductibility</p> <p>w.e.f 1st July 2024</p> | <p>Previously did not exist</p> | <p>Expansion of allowable tax deductions that are not listed in the Second schedule but are used in the normal course of generating business income.</p> | <ul style="list-style-type: none"> ▶ Allows companies to tax deductions that are used in the normal production of income but not covered in the second schedule. |
| <p>Repealing of capital deduction in regard to certain buildings constructed in support of the Standard gauge Railway</p> <p>w.e.f 1st July 2024</p> | <p>Deduction is allowed until 31st December 2024</p> | <p>The bill proposed to deduction has been deleted and therefore not applicable</p> | <ul style="list-style-type: none"> ▶ The proposal seeks to do away with the deduction accorded to entities that participated in the construction of the SGR and incurred significant capital costs in the course of construction of the SGR |
| <p>Change of year end/accounting period</p> <p>w.e.f 1ST July 2024</p> | <p>Previously did not exist</p> | <p>Where the Commissioner fails to make a decision in respect of an application to change the financial year end of a company the lack of a decision shall automatically be taken to mean that the application has not been denied.</p> | <ul style="list-style-type: none"> ▶ This is intended to allow taxpayers change their year ends when the Commissioner does not respond to their request in time . ▶ However one can still have a challenge unless the same is aligned on itax. |

Corporate Tax

| Issue | Current Provision | Proposed provision | Our comments |
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| <p>Income from Amateur Sports Associations</p> <p>w.e.f</p> <p>1ST July 2024</p> | <p>The provision currently exempts income earned by amateur sporting associations from tax</p> | <p>Deleted in entirety</p> | <p>▶ This brings to tax income earned by amateur associations to tax including membership fees paid to them.</p> |
| <p>Taxation of member clubs and trade associations</p> <p>w.e.f</p> <p>1ST July 2024</p> | <p>Gross investments receipts refers to any other income earned by such associations apart from contributions</p> | <p>Deleted in entirety</p> | <p>▶ This was done to align with the changes brought about by the Finance Act 2023</p> |
| <p>Capital allowance in Telecommunication industry</p> <p>w.e.f</p> <p>1ST July 2024</p> | <p>Investment allowance deduction for rights to use fiber optic cable by a telecommunication operator At the rate of 10% per year in equal installments</p> | <p>The proposal seeks to introduce an investment allowance deduction in respect of a purchase of a spectrum license or a right to use a fibre optic cable issued to a telecommunication operator .</p> <p>Provided that, in the case of the spectrum license purchased or acquired before the 1st July, 2024, the deduction shall be restricted to the unamortized portion over the remaining useful life of the spectrum license.</p> | <p>▶ This seeks to expand the scope of allowable investment deduction for telecommunication operators by including a spectrum license incentivizing more entities to invest in the telecommunication sector.</p> |

Corporate Tax

| Issue | Current Provision | Proposed provision | Our comments |
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| <p>Income to ship owners and air transport operators where there is no reciprocal arrangement or treaty</p> <p>w.e.f 1st July 2024</p> | <p>Currently Ship owners are taxed at a rate of 2.5% gross amount received while aircraft operators are taxed at the prevailing corporate tax rate.</p> | <p>The Bill proposes to increase tax payable by ship owners and air operators from 2.5% to 3 % of the gross amount received</p> | <p>Seeks to bring to tax income earned by ship/air operators who have no reciprocal arrangement with Kenya in respect of income earned.</p> |
| <p>Clean-up and clarification under Eighth Schedule</p> <p>w.e.f 1st July 2024</p> | <p>Definition of “company”</p> <p>The definition of ‘company’ under paragraph 1 of the Eighth Schedule makes reference to subsections 1 and 2 of Section 21 of the ITA that were deleted by the Finance Act, 2023.</p> <p>Definition of “related persons”</p> <p>There is a schedule specific definition of the term “related persons”.</p> <p>Paragraph 6(2)(h)(v) provides that a transfer of assets to a company where spouses or a spouse and immediate family hold 100% shareholding shall not be a transfer of assets for capital gains purposes.</p> | <p>The FB, 2024 proposes the following;</p> <p>Align definition of “company” under paragraph 1 of the Eighth Schedule to Section 21 as revised by Finance Act 2023.</p> <p>Delete schedule-specific definition for “related persons” therefore adopting interpretation as per the proposed revision of the term “related person” in Section 2 of the ITA.</p> <p>Amend paragraph 6(2)(h)(v) to provide that a transfer of assets to a company where an individual spouses or a spouse and immediate family hold 100% shareholding shall not be a transfer of assets for capital gains purposes.</p> | <p>▶ The proposed changes aim to ensure harmonized reading, interpretation and application of terms across the ITA.</p> |
| <p>Penalty on late submission of return for EPZ entities and penalty on instalment tax moved to TPA</p> <p>w.e.f 1st July 2024</p> | <p>Paragraph 4 of the Eleventh Schedule to the ITA provides that the penalty for failure to submit a return or late submission of an income tax return for EPZ entities shall be KES 2,000 per day for each day that the failure continues.</p> <p>The ITA provides for 5% penalty and 1% on late payments of instalment tax.</p> | <p>The FB, 2024 has proposed deletion of the late submission penalty from the ITA and moved it to Section 83 of the TPA.</p> <p>The FB, 2024 also proposes to amend the penalty to KES 20,000 per month or part thereof that the failure to submit return continues.</p> <p>Section 72C on penalty for instalment tax, has been deleted.</p> | <p>▶ The amendment consolidates the provisions for charging penalties arising on late submission of return and late payment, to the TPA.</p> |

Transfer Pricing

| Issue | Current Provision | Proposed provision | Our comments |
|---|--|---|--|
| <p>Definition</p> <p>“Related person”</p> <p>w.e.f</p> <p>1st July 2024</p> | <p>“related person” means, in the case of two persons where a person participates directly or indirectly in the management, control or capital of the business of another person</p> | <p>Related person means in the case of two persons either person who participates directly or indirectly in the management, control or capital of the business of the other person, and in the case of more than two persons,-</p> <p>(a) Any other person who participates directly or indirectly in the management, control or capital of the business of the two persons; or</p> <p>(b) An individual who-</p> <p>(i) Participates directly or indirectly in the management ,control or capital of the business of the two person; and</p> <p>(ii) Is associated to the two persons by marriage, consanguinity or affinity and the two persons participate in the management, control or capital of the business of the individual</p> | <p>▶ Expands the scope of the definition of related parties to capture all parties who might have a say in a company's affairs and not necessarily parties who deal with the company on a day-to-day basis.</p> <p>▶ This also provides for a harmonized interpretation of the term across the ITA.</p> <p>▶ We note that the expanded definition will greatly impact transfer pricing relationships as entities</p> |

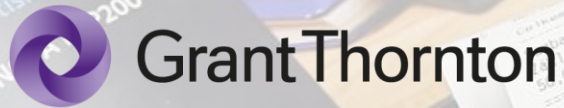


Transfer Pricing

| Issue | Current Provision | Proposed provision | Our comments |
|------------------------------------|-------------------|---|---|
| Introduction of minimum top-up-tax | N/A | <p>12G. (1) Notwithstanding any other provision of this Act, a tax known as minimum top-up tax shall be payable by a covered person where the combined effective tax rate in respect of that person for a year of income is less than 15%</p> <p>(2)The combined effective tax rate for a covered person shall be the sum of all the adjusted covered taxes, divided by the sum of all net income or loss for the year of income, multiplied by a hundred</p> <p>(3) The amount of tax payable shall be the difference between 15% of the net income or loss for the year of income of a covered person and the combined effective tax rate for the year of income multiplied by the excess profit of the covered persons.</p> <p>(4)This section shall not apply –</p> <ol style="list-style-type: none"> To a public entity that is not engaged in business To a person whose income is exempt from tax under paragraph 10 of the First Schedule To a pension fund and the assets of that pension fund To a real estate investment vehicle that is an ultimate parent entity To a non-operating investment holding company To an investment funds that is an ultimate parent entity To a sovereign wealth fund or To an intergovernmental or supranational organization including a wholly owned agency or organ of the intergovernmental or supranational organization <p>5 In this section-</p> <p>“adjusted covered taxes” means taxes recorded in the financial accounts of a constituent entity for the income, profits or share of the income or profits of a constituent entity where the constituent entity owns an interest and included taxes on distributed profits deemed profit distribution under this Act subject to such adjustments as may be prescribed;</p> <p>“covered person” means a resident person or a person with a permanent establishment in Kenya who is a member of a multinational group and the group has a consolidated annual turnover of seven hundred and fifty million Euros or more in the consolidated financial statements of the ultimate parent entity in at least two of the four years of income immediately preceding the tested year of income</p> <p>“net income or loss” means the sum net income or loss for the year of income after deducting the sum of the losses of a covered person as determined under a recognized accounting standards in Kenya; and</p> <p>“excess profit” means the net income or loss of a covered person for the year of income less-</p> <ol style="list-style-type: none"> Ten percent for the employee costs and; Eight percent for the net book value of tangible assets <p>Provided that the employee cost and book value of tangible assets may be adjusted as prescribed in regulations.</p> <p>6.This section shall come into operation on the 1st January 2025</p> | <ul style="list-style-type: none"> ▶ This introduction aims at aligning the income tax legislation with the OECD/G20 BEPS project proposals included in the Pillar 2 discussions. ▶ Pillar 2 also known as Global anti-Base Erosion Rules (GloBE Rules) proposes that in-scope multinationals shall pay a minimum of 15% in their profits arising from each jurisdiction they operate in. In-scope entities are largely MNE’s with a consolidated annual turnover of Euro 750 million or more in at least two of the four years preceding the tested year of income. Kenya has also adopted similar in-scope MNE’s. ▶ The minimum top-up tax is primarily designed to serve as a qualified minimum domestic top-up tax as proposed under OECD/G20 GloBE Rules and offers the countries that apply it, the first application in the rule order. ▶ This introduction provides an expanded tax base for Kenya where MNE’s would be in scope. ▶ We also note there is a discrepancy in the dates the proposed provisions shall take effect as the drafting of the proposal includes the date January 1, 2025 whereas the Part 1 of FB, 2024 has it under July 1, 2024. |
| w.e.f | | | |
| 1 st July 2024 | | | |

Transfer Pricing

| Issue | Current Provision | Proposed provision | Our comments |
|---|---|--|---|
| <p>Introduction of Advance Pricing Arrangements</p> <p>w.e.f</p> <p>1ST July 2024</p> | <p>Previously did not exist</p> | <p>18G.(1)The Commissioner may enter into an advance pricing agreement with any person who undertakes a transaction contemplated under section18(3) or section 18(A)</p> <p>(2) The arms length price for the transaction contemplated under section 18(3) or section18A shall be determined in accordance with the advance pricing agreement entered into under subsection(1)</p> <p>(3) The advance pricing agreement entered into under subsection (1) shall be valid for a period that does not exceed five consecutive years.</p> <p>(4) Where the Commissioner determines that the person referred to in subsection (1) entered into the advance pricing agreement through misrepresentation of facts the Commissioner shall issue a notice in writing to the person declaring the agreement to be null and void from the date the agreement was entered into.</p> | <ul style="list-style-type: none"> ▶ The OECD guidelines includes APA’s as one of the administrative approaches in solving transfer pricing disputes. ▶ Therefore this is a welcome proposal as it will provide taxpayers who opt for APA’s with tax certainty as they engage in their intercompany arrangements. ▶ We anticipate that there shall be further guidelines on the procedures to observe in concluding the APA’s. This can be included in the draft Income Tax (Transfer Pricing Rules), 2023 that are still yet to be finalized and gazetted. |
| <p>Introduction of significant economic presence tax</p> <p>w.e.f</p> <p>1st January 2025</p> | <p>The ITA provides for digital service tax at the rate of 1.5% of the gross earnings of a non-resident who has no permanent establishment in Kenya, but carrying on business over the internet or an electronic network including through a digital marketplace.</p> | <p>12E.(1) Notwithstanding any other provision of this Act, a tax known as significant economic presence tax shall be payable by a non-resident person whose income from the provision on of services is derived from or accrues in Kenya through a business carried out over a digital market-place</p> <p>(2) Subsection(1) shall not apply –</p> <p>(a) To a non-resident person who offers the services through a permanent establishment; or</p> <p>(b) To an income chargeable under section 9(2) or section 10.</p> <p>3 for the purposes of computing the tax under subsection(1),the taxable profit of a person liable to pay the tax shall be deemed to be twenty per cent of the gross turnover .</p> <p>4 A person subject to tax under this section shall submit a return and pay the tax due to the Commissioner on or before the twentieth day of the month following the end of the month in which services was offered.</p> <p>The proposed rate shall be 30% of the deemed taxable profit.</p> | <ul style="list-style-type: none"> ▶ The proposals introducing significant economic presence tax overhaul the existing digital service tax provisions. ▶ Currently the digital service tax is on the gross earnings at 1.5% whereas the significant economic presence tax has been proposed at 30% of 20% of the non-residents gross turnover. ▶ There is also need to consider transaction materiality thresholds where the non-resident incomes earned from Kenya are not substantial, therefore reducing compliance administrative burden. ▶ We expect more guidelines to be published in regards to this. |



Value added tax



Value Added Tax

| Issue | Current Provision | Proposed provision | Our comments |
|---|---|---|--|
| Definition of a tax invoice (w.e.f 1 st July 2024) | No provision for definition of tax invoice under the current VAT Act, 2013. | The Bill proposes for definition of a tax invoice under Section 2 of the VAT Act, 2013. “Tax invoice” includes an electronic tax invoice issued in accordance with section 23A of the Tax Procedures Act. | ▶ This proposal aims at increasing compliance of all taxpayers conducting business in Kenya to onboard eTIMS by providing that a tax invoice to include an electronic tax invoice. This is also aimed at widening the tax base with the automated invoicing system. |
| Time of Supply for Exported Goods (w. e. f 1 st July 2024) | Currently, the VAT Act 2013 offers clarity under subsection 12 (4) the VAT Act on the time and supply of imported goods and services. However, the Act does not offer clarity on time of supply of exported goods. | The Bill proposes to amend Section 12 of the Value Added Tax Act by inserting a new subsection immediately after subsection 4 that provides that the time of supply for exported goods shall be the time when the registered person is in possession of the required export confirmation documents. | ▶ This is a welcome proposal as there was lack of clarity on when exactly is the time deemed for supply of exported goods. This will also ensure there is compliance with regards to exports where taxpayers will be required to obtain the relevant documentation in support of the exports made. We also hope that KRA will also ensure timely issuance of the export documentation as there has been delays noted thereby slowing the export process. |
| Apportionment of input VAT (w .e.f 1 st July 2024) | Currently the VAT Act 2013 provides for apportionment of a taxable supply to, or a taxable import by, a person during a tax period relates partly to making taxable supplies and partly for another use if the fraction of the formula in subsection (6) for a tax period(a) is more than 0.90, the registered person shall be allowed an input tax credit for all of the input tax comprising component A of the formula; or(b) is less than 0.10, the registered person shall not be allowed any input tax credit for the input tax comprising component A of the formula | The Bill proposes to delete this provision of apportionment of VAT on mixed supplies. | ▶ Taxpayers dealing with mixed supplies will be required to apportion input tax incurred regardless of the percentage of taxable sales. Currently persons with taxable sales over 90% can claim full input tax. With the new provisions, they will be required to apportion. |

Value Added Tax

| Issue | Current Provision | Proposed provision | Our comments |
|--|--|---|---|
| Credit for input tax against output tax (w.e.f 1 st July 2024) | Currently the VAT Act, 2013 provides that excess input tax shall be carried forward as input tax deductible in the next tax period Provided that any such excess shall be paid to the registered person by the Commissioner where; <ul style="list-style-type: none"> such excess arising out of tax withheld by appointed tax withholding agents may be applied against any tax payable under this Act or any other written law, or is due for refund pursuant to section 47(4) of the Tax Procedures Act (Cap. 469B) the registered person lodges the claim for the refund of the excess tax within twenty-four months from the date the tax becomes due and payable such excess arises from input tax under subsection (8) | The Bill proposes to delete these provisions | <ul style="list-style-type: none"> VAT refunds will now be claimed within 6 months as per the new proposed provisions of the Tax Procedures Act. Initially refunds could be claimed within 24 months. |
| Deduction of input Tax with respect to taxable supplies made to a n aid funded project (w.e.f 1 st July 2024) | Presently Section 17(8) of the VAT Act, 2013 provides that notwithstanding the provisions of this section, a registered person who is a manufacturer may make a deduction for input tax with respect to taxable supplies made to an official aid funded project as may be approved by the Cabinet Secretary in accordance with the First Schedule. | The Bill proposes deletion of this provision. | <ul style="list-style-type: none"> Supplies to officially aid-funded projects are currently exempt. The effect of this exempt status is that it provides taxpayers to claim for input VAT incurred with regards to such supplies. The proposal to restrict claiming of input VAT will burden the investors in this industry as they cannot recover the input incurred in making supplies to the official aid funded projects. In addition such taxpayers will also not be allowed to claim VAT refunds on supplies to official aid funded projects |
| Increased VAT Registration Threshold (w .e .f 1 st July 2024) | Presently, VAT Act, 2013 under section 34 (1)(a) (b) provides that the threshold for mandatory VAT registration by a taxpayer making or about to commence making taxable supplies to be KES 5,000,000 per annum. | The Bill proposes to increase threshold for mandatory VAT registration from KES 5,000,000 to KES 8,000,000. | <ul style="list-style-type: none"> The increase in VAT threshold from KES 5,000,000 to KES 8,000,000 means that most small businesses will be exempted from VAT registration. However, a taxpayer can still choose to register voluntarily. Increasing VAT registration threshold will ease administrative and compliance burden for small businesses as it will ease the need for these businesses to charge VAT and submit VAT returns. |

Value Added Tax

| Issue | Current Provision | Proposed provision | Our comments |
|---|--|---|---|
| <p>Change from exempt goods to taxable.</p> <p>(w.e.f 1st July 2024)</p> | <p>The current VAT Act provides for the following specified goods as exempted from VAT:</p> <ul style="list-style-type: none"> • 8802.30.00 Aeroplanes and other Aircrafts on unladen weight exceeding 2,000 kgs but not exceeding 15,000 kg. • 8802.60.00 Spacecraft (including satellites) and suborbital and spacecraft launch vehicles • Gluten bread and Unleavened bread. | <p>The Bill proposes the deletion of the specified items from exempt VAT status to taxable.</p> | <ul style="list-style-type: none"> ▶ This proposal will increase the cost of acquiring Aeroplanes and other aircrafts of unladen weight exceeding 2,000 kgs but not exceeding 15,000 kgs. However this proposal is going to affect a few Kenyans. ▶ This proposal will increase the cost of gluten and unleavened bread owing to change in VAT status from exempt to taxable. |
| <p>Change from taxable status to exempt goods status for Aircraft parts</p> <p>(w.e.f 1st July 2024)</p> | <p>Presently, the VAT Act 2013 limits the exempt status of aircraft parts to: Aircraft parts of heading 8803, excluding parts of goods of heading 8801.</p> | <p>The Bill proposes to expand the scope of aircraft parts exempted from VAT to include all parts of aircrafts under chapter 88.</p> | <ul style="list-style-type: none"> ▶ The change of aircraft parts status from taxable goods to exempt goods will reduce the cost of supply and importation of aircraft parts. This is good news to businesses dealing with importation and supply of aircraft parts in the country as costs of aircraft parts will reduce. |
| <p>Goods including material supplies, equipment, machinery and motor vehicles supplied or imported to National Intelligence Service</p> <p>(w.e.f 1st July 2024)</p> | <p>The current VAT Act 2013, classifies All goods including material supplies, equipment, machinery and motor vehicles, for official use by the Kenya Defence Forces and the National Police Service as exempt.</p> | <p>The Bill proposes to also include goods including material supplies, equipment, machinery and motor vehicles for official use by the National Intelligence Service to be exempted, previously they were taxable.</p> | <ul style="list-style-type: none"> ▶ The impact of this amendment is that material supplies, equipment, machinery and motor vehicles for official use by National Intelligence Service will also be exempt. |

Value Added Tax

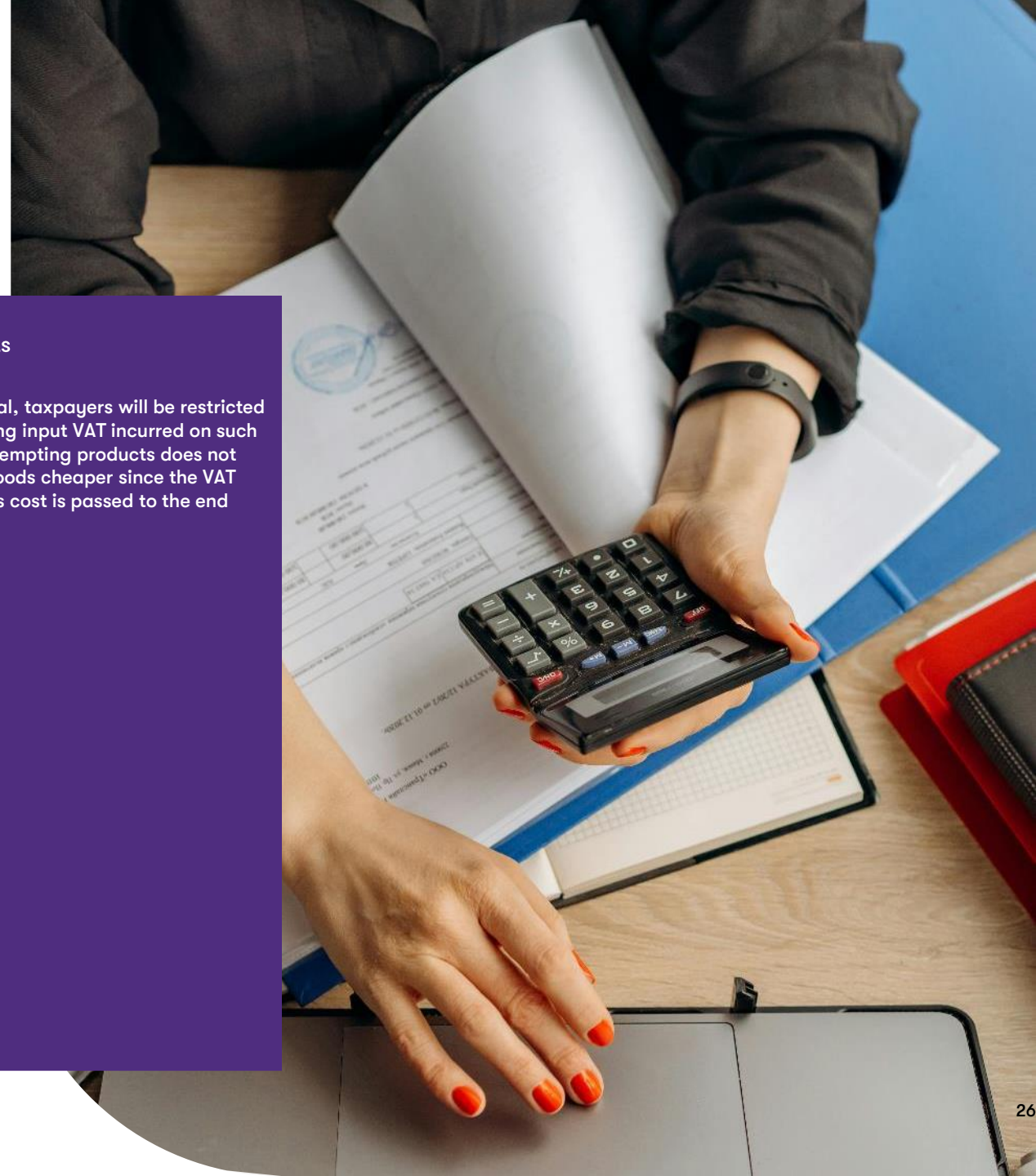
| Issue | Current Provision | Proposed provision | Our comments |
|---|--|---|---|
| <p>Change of VAT status from exempt to taxable goods.</p> <p>(w.e.f 1st July 2024)</p> | <p>Currently, the VAT Act 2013 provides for exemption of the following specified items:</p> <ul style="list-style-type: none"> • Direction-finding compasses, instruments and appliances for aircraft. • Pressure sensitive adhesive of tariff number 3506.91.00. • Plain polythene film/LPDE of tariff number 3921.19.10. • Plain polythene film/PE of tariff number 3921.19.10 • PE white 25-40gsm/release paper of tariff number 4811.49.00 • ADL 25-40gsm of tariff number 5603.11.00. • Goods imported or purchased locally for use by the local film producers and local filming agents, upon recommendation by the Kenya Film Commission, subject to approval by the Cabinet Secretary to the National Treasury. • Such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector. • Taxable goods supplied to persons that had an agreement or contract with the Government prior to 25th April 2020 and the agreement or contract provided for exemption from value added tax. • Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks • Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion • Plant, machinery and equipment used in the construction of a plastics recycling plant. • Musical instruments and other musical equipment, imported or purchased locally, for exclusive use by educational institutions, upon recommendation by the Cabinet Secretary responsible for Education. | <p>The Bill proposes the deletion of these goods from the list of exempted goods, changing their status to taxable.</p> | <ul style="list-style-type: none"> ▶ This will ultimately increase the cost of these specified items making them unaffordable to the consumers due to the additional VAT cost. ▶ Businesses dealing in such supplies will however be in a position to claim input VAT attributable to the sale of such supplies. ▶ This change will negatively affect producers of local content in the film industry as the cost of film production will be costly owing to change of VAT status from exempt to taxable. It will also likely to affect the quantity of local production and even content creators will be affected in production of their content. ▶ The proposal to charge VAT on taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities is going to negatively affect the tourism industry in the country, As a sector, tourism industry was largely affected by the effects of Covid-19 and this proposal will discourage investors in this industry. ▶ The change of VAT status of plant, machinery and equipment used in construction of plastic recycling plant is a step in the wrong direction, as it will make efforts in recycling of plastic materials costly hence back-tracking on efforts to conserve the environment. ▶ Educational institutions will bear extra cost in acquiring musical instruments for use in the institutions. |

Value Added Tax

| Issue | Current Provision | Proposed provision | Our comments |
|---|--|--|--|
| New Definition under exemption for Locally Manufactured passenger motor vehicles | Presently the VAT Act 2013 does not provide for this definition. | The Bill proposes to define “Original equipment manufacturer” as a manufacturer of parts and subassemblies who owns the intellectual property rights in the parts or subassemblies. | ▶ This proposal will offer clarity of whom an original equipment manufacturer in regards to locally manufactured passenger motor vehicles. |
| Companies manufacturing Human Vaccine | Presently the VAT Act 2013 provides that: Taxable goods, inputs and raw materials imported or locally purchased by a company which— (a) is engaged in business under a special operating framework arrangement with the Government; and (b) (b) is incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least ten billion shillings, subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health, shall be exempted from VAT. | The Bill proposes to add the following provision to this paragraph by adding that : Provided that this paragraph shall not apply to a special operating framework arrangement entered into by the Government on or after the 1st of July, 2017 | ▶ The effect of this proposal is that any operating arrangement agreement between a company undertaking to manufacture human vaccine and the government entered on or after 1 st July 2017 ,the supply of taxable goods, inputs and raw material imported or locally purchased by such a company shall not be exempt but will be taxable. This will negatively affect the cost of business for such companies undertaking business under an operating framework arrangement with the government that commenced after 1 st of July 2017, thus increasing the cost of manufacturing human vaccine. |
| New Provisions for exempt goods (w .e. f 1 st July 2024) | No provisions currently either zero rated or taxable in the current VAT Act 2013. | The Bill proposes the addition of the supply or importation of the following goods to Exempt status category: <ul style="list-style-type: none"> • Inputs and raw materials used in manufacture of mosquito repellent. • Mosquito repellent • Tea packaging material • Micronutrients, foliar feeds and bio stimulants • Inbound international sea freight offered by a registered person. • The supply of motorcycles of Tariff heading 8711.60.00. • Bioethanol vapor (BEV) Stoves classified under classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel) | ▶ With the new provisions under exempt category, these specified items will now be affordable to consumers . Businesses however will not be able to claim the input VAT directly attributable to such exempt supplies ▶ We note that over the years, there has been consistent effort to make pesticide either vatable or exempt, this demonstrates that fiscal policy makers have failed to understand that exempting an item or service from VAT does not make it cheaper. |

Value Added Tax

| Issue | Current Provision | Proposed provision | Our comments |
|---|--|---|--|
| Change from zero rated VAT status to exempt VAT status. (w.e.f 1 st July 2024) | <p>The current VAT Act 2013 provides for zero rating of the following supplies</p> <ul style="list-style-type: none">• All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.• Agricultural pest control products• Milk and cream under the following tariff numbers; 0401.10.00, 0401.20.00, 0401.40.00, 0401.50.00. | <p>The Bill proposes that the specified supplies will be removed from zero rated status to exempt status.</p> | <p>► This proposal, taxpayers will be restricted from claiming input VAT incurred on such supplies. Exempting products does not make the goods cheaper since the VAT absorbed as cost is passed to the end consumer.</p> |



Value Added Tax

| Issue | Current Provision | Proposed provision | Our comments |
|--|---|---|--|
| <p>Change from Exempt status to Taxable- Financial Services</p> <p>(w.e.f 1st July 2024)</p> | <p>The current VAT Act, 2013 has listed these specified financial services as exempt supplies:</p> <ul style="list-style-type: none"> •issuing of credit and debit cards; •telegraphic money transfer services; •foreign exchange transactions, including the supply of foreign drafts and international money orders; •cheque handling, processing, clearing and settlement including special clearance or cancellation of cheques; •issuance of securities for money, including bills of exchange, promissory notes, money and postal orders; •The assignment of a debt for consideration; and the provision of financial services on behalf of another on a commission basis | <p>The Bill proposes to scrap VAT exemptions for the specified financial services subsequently leading to the specified financial services being chargeable to VAT at the standard rate of 16%.</p> | <ul style="list-style-type: none"> ▶ Charging VAT on these financial services will increase the cost of such services and therefore negatively impacting the final consumers. Institutions offering such services will be forced to increase the cost of accessing these financial services which were previously exempted supplies. |
| <p>Insurance and reinsurance premiums</p> <p>(w.e.f 1st July 2024)</p> | <p>Currently, the VAT Act, 2013 provides that insurance and reinsurance services are exempted from application of VAT with the exception of the following;</p> <ul style="list-style-type: none"> • management and related insurance consultancy services, • actuarial services and • services of insurance assessors. | <p>The Bill proposes to limit the VAT exemption only to insurance and reinsurance premiums.</p> | <ul style="list-style-type: none"> ▶ This proposal makes all other insurance services taxable save for insurance and reinsurance premiums. This is also likely to increase the cost of insurance services. |
| <p>Charge of VAT on Betting, Gaming and Lotteries Services</p> <p>(w .e.f 1st July 2024)</p> | <p>Currently the First Schedule of the VAT Act, 2013 under Part II Paragraph 17 provides that betting, gaming and lotteries services are exempt from VAT.</p> | <p>The Bill proposes to delete the VAT exemption for betting, gaming and lotteries services. These services will now be subject to VAT at the standard rate of 16%.</p> | <ul style="list-style-type: none"> ▶ The trends indicate that betting is on the increase in Kenya and measures should be put in place to ensure any revenues gained from betting practices are maintained and taxed in Kenya. ▶ The change of VAT status from exempted to taxable will most likely lead to over taxation of the betting industries considering increased tax rates already imposed on the gambling industry in Kenya. ▶ The move is however targeted to increase the revenue collections from the betting industry. |

Value Added Tax

| Issue | Current Provision | Proposed provision | Our comments |
|--|--|---|---|
| <p>Change from Exempt status of services to taxable.</p> <p>(w.e.f 1st July 2024)</p> | <p>The current VAT Act 2013 provides for exemption of the following services:</p> <ul style="list-style-type: none"> Hiring, leasing and chartering of aircrafts, excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00. Services imported or procured locally for use by the local film producers or local film agents upon recommendation by the Kenya Film Commission, subject to approval by the Cabinet Secretary for the National Treasury Taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon the recommendation by the Cabinet Secretary responsible for matters relating to recreational parks. 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. | <p>The Bill proposes to remove the specified services from VAT exemption to taxable status.</p> | <ul style="list-style-type: none"> ▶ This means that the cost of hiring, leasing and chartering of aircrafts, is going to increase owing to the change of VAT status from exempt to taxable. The net effect of this proposal is sluggish investment in the aviation sector in Kenya, this will also have a ripple effect to the tourism sector as aviation sector is complimentary to tourism sector as it an alternative mode of transport for tourists. ▶ The local film industry and even content creation which is now an employment opportunity for the youth in Kenya, will be affected by this proposal as it will make the cost of making production costly. ▶ Taxation of services for the construction of tourism facilities will affect investment in the tourism sector. This will increase the cost of both domestic and international tourism services in Kenya. It is imperative to note that the removal of VAT exemption status of these specified items in the tourism sector is intended to standardize the tax structure across different sectors. ▶ This proposal will lead to increased expenses in construction of specialized hospitals, most counties are currently grappling with the issue of health sector management as a devolved function and thus this will even make the situation dire. |
| <p>VAT exemption of transfer of business as a going concern</p> <p>(w.e.f 1st July 2024)</p> | <p>Presently the VAT Act, 2013 provides for applicability of VAT on transfer of business as a going concern at the standard rate of 16%.</p> | <p>The Bill proposes to amend First Schedule of VAT Act by introducing Paragraph 35 immediately after paragraph 34, thus providing the transfer of business as a going concern exempt from VAT.</p> | <ul style="list-style-type: none"> ▶ Transfer of Business as Going Concern (TOGC) being exempted from VAT means that VAT will now not be charged on the transfer of business. |

Value Added Tax

| Issue | Current Provision | Proposed provision | Our comments |
|---|---|--|--|
| <p>VAT on supply of ordinary bread.</p> | <p>The current provision in the VAT Act 2013 provides for zero rated status of supply of ordinary bread.</p> | <p>The Bill proposes removal of the VAT zero rated status on ordinary bread to taxable status.</p> | <p>▶ This proposal is likely to cause a lot of friction in the public sphere. The move to tax ordinary bread at 16% from exempt status is tailored to reduce cases of VAT refunds claims in relation to supply of ordinary bread. However, this move is likely to make bread costly as the final consumer will bear the VAT charged on ordinary bread.</p> |
| <p>Change from zero rated supplies to taxable.</p> <p>(w.e.f 1st July 2024)</p> <p>(w.e.f 1st July 2024)</p> | <p>The current VAT Act 2013 provides for zero rating of the following supplies:</p> <ul style="list-style-type: none"> • Transportation of sugarcane from farms to milling factories. • Inbound international sea freight offered by a registered person. • The supply of locally assembled and manufactured mobile phones. • The supply of motorcycles of tariff heading 8711.60.00 • The supply of electric bicycles. • The supply of solar and lithium ion batteries. • The supply of electric buses of tariff heading 87.02. • Bioethanol vapour (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel). | <p>The Bill proposes that the specified supplies will be removed from zero rated status to taxable status.</p> | <p>▶ The cost of sugar is likely to increase, due to the fact that the cost of production of sugar will increase owing to increased cost of transportation of sugarcane to milling factories.</p> <p>▶ The proposal to change zero rated status of the supplies to taxable will lead to increased supply cost of the products also, it will reduce the input VAT claimable from supply of zero-rated sales.</p> <p>▶ Investors in the assembly and manufacture of mobile phone will be discouraged as they will incur additional VAT cost.</p> <p>▶ Standard rating supply of electric cars, buses, motorcycles will reduce their usage due to the increased costs. This is not a welcome move if the country is looking at reducing carbon emission through the use of electric cars and motor cycles. This proposal goes against government's drive for clean energy and environment conservation through tree planting exercise.</p> <p>▶ The change of taxable status of BEV from zero-rated supplies to taxable is likely to have a negative impact on the climate as taxpayers will now find it costly to use of LPG and bioethanol vapour fuels in comparison with other environment harming sources of energy for cooking.</p> |



Excise duty



Excise Duty (w.e.f. 1 July 2024)

| Issue | Current Provision | Proposed provision | Our comments |
|---|---|--|---|
| Alignment of the tariff codes in the Excise Duty Act with those in Annex 1 of the Protocol on the Establishment of the East African Customs Union. | | To classify goods accordingly, the bill proposes to add a provision that aligns the tariff codes in the Excise Duty Act with those in Annex 1 of the Protocol on the Establishment of the East African Customs Union. | ▶ By aligning tariff codes with those in Annex 1 of the Protocol on the Establishment of the East African Customs Union, confusion and potential disagreements over product classification at borders are minimized. This standardization streamlines the flow of goods across the region, fostering a more predictable trading environment. |
| Introduction of excise duty on excisable services offered by a non-resident through a digital platform | Currently, there's no excise duty specifically applied to digital services offered in Kenya by non-residents via digital platforms. | The bill proposes to introduce excise duty on excisable services provided in Kenya by non-residents via digital platforms. The excise duty shall be payable by the non-resident person offering the service. | ▶ This proposal expands the scope of excise duty to capture revenue from excisable digital services offered by non-resident companies. ▶ The proposal also aims to address the current imbalance by extending excise duty to non-resident companies offering digital services in Kenya. This creates a more level playing field for Kenyan providers who were previously disadvantaged. |
| Empowering the cabinet Secretary responsible for National Treasury to exempt spirit made from agricultural products in Kenya from excise duty | Spirit made from sorghum, millet or cassava or any other agricultural products (excluding barley) in Kenya are subject to excise duty. | The bill proposes to empower the cabinet Secretary responsible for National Treasury to exempt spirit made from sorghum, millet or cassava or any other agricultural products (excluding barley) in Kenya are subject to excise duty from excise duty. | ▶ If exercised by the cabinet secretary, the proposal could offer a double boost to the Kenyan economy. By exempting sorghum, millet, and cassava-based spirits from excise duty, the government could incentivize the production of these crops, benefiting Kenyan farmers. Additionally, this exemption could lead to lower production costs for certain spirit-producing industries, potentially bringing down prices for consumers. |
| Removal of relief for raw materials | The Excise Duty Act allows manufacturers to offset excise duty paid on raw materials against the finished goods' excise duty. Additionally, licensed resellers of internet data services can offset bulk purchase excise duty against the final consumer's excise duty. | The bill proposes to repeal the current provision on excise duty relief for raw materials and the relief to resellers of internet data services. | ▶ Manufacturers may face higher production costs due to non-refundable raw material excise duty, potentially leading to price increases for consumers. Similarly, it is likely that licensed resellers of internet data services will pass on the additional costs to their consumers. |
| Extension of timeline for payment of excise duty by manufacturers of alcoholic beverages | Licensed manufacturers of alcoholic beverages are required to make excise duty payment within twenty-four (24) hours of removal of the goods from the stockroom. | The bill proposes to extend the extend the timeline for payment of excise duty by licensed manufacturers of alcoholic beverages to five (5) working days, upon removal of the goods from the stockroom. | ▶ This proposal gives manufacturers more time to settle their excise duty payments. This provision will soften the blow on account that the manufacturers of alcoholic beverages will not be able set off relief on incurred excise duty on purchase of raw materials. |
| Timeframe for processing license applications. | There are no timelines for the commissioner to consider and either grant or refuse to grant an application for a license. | The bill proposes to introduce a 14 day timeline for the commissioner to consider and either grant or refuse to grant an application for a license. | ▶ This proposal introduces a clear deadline for the Commissioner to make a decision on the application. This provides predictability and potentially improves efficiency for applicants. |

Excise Duty

| Issue | Current Provision | Proposed provision | Our comments |
|---|---|--|---|
| Excise duty on motorcycles (w.e.f 1 st July 2024) | Motorcycles of tariff 87.11 other than motorcycle ambulances, locally assembled motorcycles and electric motorcycles are subject to excise duty at Kes 11,608.23 per unit. | The bill proposes to narrow down the scope of motorcycles subject to excise duty to those of tariff 87.11.60.00 and change the rate of excise duty to 10% of the value or KES 12,952.83 per unit, whichever is higher. | ▶ The proposal seeks to only tax motorcycles with an electric motor for propulsion. This seems to go against President Ruto's national e-mobility programme which was launched last year and placed motorbikes at the centerpiece of a move to make transport green and reduce air pollution. The proposed amendment will see the electric motorcycles being less competitive from an initial purchase price front. |
| Exclusion of certain products that meet the East African Community Rules of Origin from excise duty. w.e.f. 1 July 2024 | <p>Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skilllets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90 are subject to excise duty at the rate of 25%.</p> <p>Imported eggs of tariff heading 04.07 are subject to excise duty at the rate of 25%.</p> <p>Imported onions of tariff heading 07.03 are subject to excise duty at the rate of 25%.</p> <p>Imported potatoes, potato crisps and potato chips of tariff heading 07.01 and imported potatoes of tariff numbers 0710.10.00, 2004.10.00 and 2005.20.00 are subject to excise duty at the rate of 25%.</p> | The bill proposes to exclude these products originating from East African Community Partner States that meet the East African Community Rules of Origin from excise duty. | ▶ These proposals aim to stimulate trade within the East African Community (EAC) by exempting various products originating from EAC Partner States that meet the EAC Rules of Origin from excise duty. This could lead to several potential benefits: <ul style="list-style-type: none"> • Lower Consumer Prices: Increased competition from duty-free EAC products could translate to more affordable options for Kenyan consumers. • Boosted Regional Trade: Removing excise duties on these products can act as a trade barrier reduction, encouraging economic activity within the EAC. |
| Definition of the term "original equipment manufacturer" w.e.f. 1 July 2024 | There's no definition of "original equipment manufacturer" in the current act. | The Bill proposes to introduce a definition of "original equipment manufacturer" to mean "a manufacturer of parts and subassemblies who owns the intellectual property rights in the parts or subassemblies." | ▶ The proposal clarifies the meaning of the "original equipment manufacturer" meaning that the exemption would be restricted to manufacturers of passenger motor vehicles in Kenya where at least thirty percent (30%) of the motor vehicle comprises parts and subassemblies from an original equipment manufacturer in Kenya. This is to align to the same definition introduced in the VAT Act exemptions introduced via Finance Act, 2023. |

Excise Duty (w.e.f. 1 July 2024)

| Issue | Current Provision | Proposed provision | Our comments |
|---|---|---|--|
| Exclusion of other products from excise duty act | Imported cement clinkers are subject to excise duty at the rate of 10% of the value or shs.1.50 per kg, whichever is higher. | The bill proposes to exclude cement clinkers from excise duty. | ▶ The proposal is likely to reduce the cost of cement clinkers. The tax was introduced last year by the Finance Act, 2023 and has been a challenge to many manufacturers of cement since its implementation. |
| Exemption of goods including materials supplies, equipment, machinery and motor vehicles for the official use by the National Intelligence Service | Currently, the supply of all goods including materials, supplies, equipment, machinery, and motor vehicles for the official use by the National Intelligence Service are not exempt from excise duty. | The bill proposes to exempt all goods including materials, supplies, equipment, machinery, and motor vehicles for the official use by the National Intelligence Service from excise duty. | ▶ The National Intelligence Service plays a critical role in safeguarding national security. Equipping them with essential tools and resources without the added burden of excise duty allows for a more efficient allocation of resources and potentially faster procurement processes. This would mirror the VAT exemption also provided |
| Excise duty on imported articles of plastic | Only imported articles of plastic of tariff heading 3923.30.00 and 3923.90.90 are subject to excise duty at the rate of 10%. | The proposal seeks to introduce excise duty on all articles of plastic of tariff heading 3923.30.00 and 3923.90.90. | ▶ This proposal seeks to reverse the enactment in the Finance Act 2023 and aims to not only discourage plastics use of imported plastics but also domestically produced plastic products under the specific tariff headings. |

Increase in excise duty rates for excisable services

| Service | Proposed rate | Current rate | Our comments |
|--|---------------|--------------|---|
| Telephone and internet data services are taxable at 15% of excisable value . | 20% | 15% | ▶ This is likely to increase the cost of telephone and internet data which could exacerbate the digital divide, making internet access less affordable for low-income households and hindering their ability to participate in the digital economy. |
| Fees charged for money transfer services by banks, money transfer agencies, and other financial service providers | 20% | 15% | ▶ The higher duty will translate to a higher cost for sending and receiving money, particularly for smaller transactions. This could discourage people, especially those in low-income groups, from using formal money transfer services. |
| Betting on the amount wagered or staked. | 20% | 12.5% | ▶ This proposed increase is likely to further discourage the consumption of betting services in addition to raising revenue for the government. |
| Gaming on the amount wagered or staked. | 20% | 12.5% | ▶ This proposed increase is likely to further discourage the consumption of gaming services in addition to raising revenue for the government. |
| Prize Competition on the amount wagered or staked. | 20% | 12.5% | |
| Lottery on the amount wagered or staked. | 20% | 12.5% | ▶ This proposal is aimed at increasing government revenue while at the same time discouraging consumption of lottery services. |

Excise Duty

Decrease in rates for Alcoholic beverages (w.e.f. 1 September 2024)

| Beverage | Current rate | Proposed rate | Our comments |
|--|-----------------------|--|--|
| Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits | Shs. 229 per litre. | Shs. 22.5 per centilitre of pure alcohol | <ul style="list-style-type: none"> ▶ The proposed change is in response to IMF backed resets and Medium Term Revenue Strategy to review how alcoholic beverages are taxed. The proposal changes this to be computed on pure alcohol content on observation that these beverages contain other ingredients in addition to the pure alcohol. ▶ The proposal will see a sharp increase in spirits with more than 40% alcohol content. |
| Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6% | Shs. 134 per litre | Shs. 22.5 per centilitre of pure alcohol | |
| Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6% | Shs. 335.30 per litre | Shs. 16 per centilitre of pure alcohol | |

Increase in rates

| Item | Current rate | Proposed rate | Our comments |
|---|--------------------------|--------------------------|---|
| Imported sugar confectionary of tariff heading 17.04 | Shs. 40.37 per kg. | Shs. 257.55 per kg. | <ul style="list-style-type: none"> ▶ This proposal is likely to increase the cost of confectionary sugar under the specific tariff head. The idea is to promote use of domestically produced sugar but only works where the local sugar can serve as a substitute. ▶ These products have over the years proven to have inelastic demand. Though the increase in Excise Duty may be implemented to discourage consumption, the main purpose serves to increase revenue collection. |
| Cigarette with filters (hinge lid and soft cap) | Shs. 3,825.99 per mille. | Shs. 4,100 per mille. | |
| Cigarettes without filters (plain cigarettes) | Shs. 2,752.95 per mille. | Shs. 4,100 per mille. | |
| Liquid nicotine for electronic cigarettes | Shs. 70 per millilitre. | Shs. 100 per milliliter. | |
| Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding approved medicinal products | Shs.1,500 per kg. | Shs. 2,000 per kg. | |

Excise Duty

Introduction of Excise Duty to new goods and services (w.e.f: 1 July 2024)



| Item | Proposed rate | Our comments |
|--|--|---|
| Coal | 5% of the value or KSh. 27,000 per metric ton whichever is higher. | ▶ The proposal aims to discourage the extraction and use of coal in a bid to reduce environmental pollution. |
| Vegetable oils of tariff codes 1511,1512,1515 and (Palm oil, Sunflower- seed oil, jojoba oil, margarine) | 25%. | ▶ The government aims to increase revenue by introducing excise duty on the products under the specific tariff codes. |
| internet and social media advertisements relating to alcoholic beverages, betting, gaming, lotteries, and prize competition. | 15% on fees charged for internet and social media advertisements relating to alcoholic beverages, betting, gaming, lotteries, and prize competition. | ▶ The Finance Act 2023 introduced Excise Duty on on fees charged on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions shall be at the rate of 15%. This new proposal seeks to also capture the same services provided on the internet and social media platforms. |



Grant Thornton

Tax Procedures Act

Tax Procedures Act

| Issue | Current Provision | Proposed provision as per Finance Bill 2024 | Comments |
|---|--|--|---|
| <p>Application and cancellation for tax agent license w.e.f. 1st July 2024</p> | <p>Section 19 subsection (3) of the TPA states that an applicant shall, in addition to the requirements set out in subsections (1) and (2), be required to be recommended for registration by the Tax Agents Committee.</p> <p>The opening sentence of Section 22 Subsection (3) begins with “The Commissioner shall cancel the license of a tax agent if—.”</p> | <p>Section 19 of the Tax Procedures Act is amended in subsection (3), by inserting the words “established by Regulations prescribed under this Act” immediately after the words “Tax Agents Committee”.</p> <p>Section 22 of the Tax Procedures Act is amended in subsection (3), by inserting the words “on the recommendation of the Tax Agents Committee established by Regulations prescribed under this Act” immediately after the words “Commissioner shall” appearing in the opening sentence.</p> | <ul style="list-style-type: none"> ▶ The regulation will help the committee in the issuance and cancellation of tax agents licenses. ▶ The proposed amendment adds that for the cancellation of the tax agent’s license, there has to be recommendation by the Tax Agents Committee established by regulations prescribed in the act. ▶ This check will ensure the provision of tax services by persons well versed with tax laws. |
| <p>Record Keeping w.e.f. 1st July 2024</p> | <p>Not Applicable</p> | <p>Section 23A is expanded by inserting new subsections immediately after subsection (2).</p> <p>(2A) An electronic tax invoice issued under subsection (2) shall contain the following information—</p> <ul style="list-style-type: none"> (a) the words “TAX INVOICE”; (b) the name, address and PIN of the supplier; (c) the name, address and PIN if any, of the purchaser; (d) the serial number of the tax invoice; (e) the date and time which the tax invoice was issued and the date and time which the supply was made. <p>if it is different from the date the tax invoice was issued;</p> <ul style="list-style-type: none"> (f) the description of the supply including quantity of the goods or the type of services; (g) the details of any discount allowed at the time of supply; (h) the consideration for the supply; (i) the tax rate charged and total tax amount of tax charged; and (j) any other prescribed information. | <ul style="list-style-type: none"> ▶ The proposed amendment seeks to align the record-keeping requirements of the TPA with respect to the adoption of TIMS and ETIMS. ▶ The amendment breaks down the requirements for what is to be considered a valid electronic invoice which taxpayers will now be required to maintain. This change streamlines the record-keeping section to include the electronic tax invoices introduced by the Finance Act 2023. ▶ This is a necessary alignment as the Tax Procedures Act deals with administrative procedures. |

Tax Procedures Act

| Issue | Current Provision | Proposed provision as per Finance Bill 2024 | Our comments |
|--|---|---|---|
| <p>Doubt or difficulty in recovery of tax</p> <p>w.e.f. 1st July 2024</p> | <p>The current legislation provides for Tax Amnesty on penalty and interest.</p> | <p>The bill proposes to enhance Section 37 E which states that:</p> <ol style="list-style-type: none"> 1. This section applies where the Commissioner determines that— <ol style="list-style-type: none"> a) it may be impossible to recover an unpaid tax; b) there is undue difficulty or expense in the recovery of an unpaid tax; c) there is hardship or inequity in relation to the recovery of an unpaid tax; or d) there is any other reason occasioning inability to recover the unpaid tax. 2. With the prior written approval of the Cabinet Secretary the commissioner may refrain from assessing or recovering an unpaid tax and the liability and tax shall be deemed to be extinguished or abandoned or remitted, as the case may be. | <ul style="list-style-type: none"> ▶ The bill proposes to provide relief to taxpayers on unpaid taxes in instances where it is impossible to recover the amounts due to hardships. A similar provision had previously been repealed by the Finance Act 2023. ▶ This is a welcome move as it helps offload the tax burden on the taxpayers who are not in a position to pay taxes as a result of the circumstances provided for in the section. ▶ On the flip side, we note that there is a requirement for approval from the cabinet secretary and thus this layer will make the process difficult and might even involve a court process. |
| <p>Power to collect tax from person owing money to a taxpayer (Agency notice)</p> <p>w.e.f. 1st July 2024</p> | <p>Not Applicable</p> | <p>The Bill proposes to insert a new subsection immediately after section 42(2) which is subsection 2A which states that “Subject to subsection (7), the notice issued under subsection (2) shall be valid for a period of one year.”</p> | <ul style="list-style-type: none"> ▶ The amendment proposes that the agency notice served to the appointed “agents” will be valid for a period of 1 year. This means that the notice will remain in place for one year and the agent has an extended period to act on the notice. ▶ Currently subsection 7 states that agents can notify the commissioner if they are unable to comply with the notice due to lack of funds and the commissioner can accept or reject the notification, however with this new provision, agents will have a longer time to act which means they will be forced to comply. |
| | <p>Section 42 (13) states that “A taxpayer who without reasonable cause fails to comply with a notice or a requirement by the Commissioner under this section shall be personally liable for the amount specified in the notice or requirement.”</p> | <p>In subsection 13 of section 42 the bill has deleted the below words “taxpayer who without reasonable cause fails to comply with a notice” and therefore substituting the words “person who without reasonable cause fails to comply with a notice issued under subsection (2)”;</p> | <ul style="list-style-type: none"> ▶ The proposal seeks to replace the word taxpayer with the word person to streamline the provision with the other subsections under this section and provide clarity on the who is liable for non-compliance with the agency notice. |
| | <p>Section 42 (14) states that “The Commissioner shall not issue a notice under this section unless —</p> <ol style="list-style-type: none"> e) the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court. .” | <p>The bill proposes to delete the section</p> | <ul style="list-style-type: none"> ▶ The bill is proposing to delete the subsection providing wiggle room to KRA to issue agency notices immediately after a judgement is issued by a Tribunal or Court in their favor. ▶ This means that KRA will issue taxpayers with agency notices irrespective of their right to appeal and expose a taxpayer to a higher risk of agency notice. |

Tax Procedures Act

| Issue | Current Provision | Proposed provision as per Finance Bill 2024 | Comments |
|---|--|---|--|
| <p>Appointment of VAT withholding agent w.e.f. 1st July 2024</p> | <p>Section 42A subsection (1) states that “The Commissioner may appoint a person to withhold two percent of the taxable value on purchasing taxable supplies at the time of paying for the supplies and remit the same directly to the Commissioner:”</p> <p>Provided that the withholding tax shall not apply to the taxable value of zero-rated supplies and registered manufacturers whose value of investment in the preceding three years from the 1st July 2022 is at least three billion.</p> <p>Section 42A subsection (4C) states that “A person who is required under this section to withhold tax commits an offence if the person—</p> <p>(a) fails to withhold the whole amount of the tax which should have been withheld; or</p> <p>(b) fails to remit the amount of the withheld tax to the Commissioner by the twentieth day of the month following that in which the deduction was made.”</p> <p>Section 42 (4D) states that “A person who commits an offence under subsection 4C is liable on conviction to a penalty of ten percent of the amount involved.</p> | <p>The bill proposes to delete the proviso to this section.</p> <p>The bill proposes to delete the subsection and substitute it with the following subsection “(4C) A person who is required under this section to withhold tax, and without reasonable cause—</p> <p>(a) fails to withhold the whole amount of the tax that should have been withheld; or</p> <p>(b) fails to remit the amount of the withheld tax to the Commissioner by the fifth working day after the deduction was made,</p> <p>shall be liable to a penalty of 10% of the amount not withheld or remitted.</p> <p>The bill proposes to delete Section 4D</p> | <ul style="list-style-type: none"> ▶ The proposed amendment to delete the proviso to the section is a move to provide clarity. As it stands, the taxable value of zero-rated supplies would result in a tax of zero percent and thus it would not make sense to withhold VAT and hence this exemption was not necessary. ▶ Further, the manufacturers whose value of investment was at least three billion up to 1st July 2022 will be affected by this change as this will mean that their supplies will be subject to withholding VAT deduction. ▶ The bill proposes to provide clarity on the penalties and fines for failure to withhold or remit tax for withholding tax agents. ▶ Initially the section read that the ten percent penalty would be due on conviction and this would have been interpreted as having a requirement for a conviction for the taxes to be due, however the amendment seeks to clarify that the penalty is due when the withholding tax is not withheld or remitted by the fifth working day. ▶ Clean up exercise. |
| <p>Offset or refund of overpaid tax w.e.f. 1st July 2024</p> | <p>Section 47 subsection (1) states that “Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner, in the prescribed form—</p> <p>(a) to offset the overpaid tax against the taxpayer's future tax liabilities; or</p> <p>(b) for a refund of the overpaid tax within five years, or six months in the case of value added tax, after the date on which the tax was overpaid.”</p> | <p>The bill proposes to delete the subsection and substitute it with the below “(1) Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner in the prescribed manner for a refund of the overpaid tax.</p> <p>prescribed form to offset the overpaid tax against the taxpayer's outstanding tax debts and future tax liabilities; or for a refund of the overpaid tax—</p> <p>(a) in the case of income tax, within five years from the date on which the tax was overpaid; or</p> <p>(b) in the case of any other tax, within six months from the date on which the tax was overpaid.”</p> | <ul style="list-style-type: none"> ▶ The bill proposes to provide further clarity on the utilization of overpaid taxes and the time range for application of the overpaid taxes and the types of taxes. ▶ The bill states that application for refund or offset for other taxes other than income tax will have to be made within six months. This is a change from the current provision which specifies Value Added Tax as the only tax for which application of refund is to be made within six months. ▶ Taxpayers will need to be agile and to always monitor the overpaid taxes to ensure that the time does not lapse before utilizing the amounts or applying for a refund. |

Tax Procedures Act

| Issue | Current Provision | Proposed provision as per Finance Bill 2024 | Our comments |
|---|--|--|---|
| <p>Objection to tax decision</p> <p>w.e.f. 1st July 2024</p> | <p>The TPA section 51 subsection 4A states that “Despite subsection (3), where a taxpayer fails to provide the information required under subsection (4) or fails to provide the information within the specified period, the Commissioner may make an objection decision within sixty days after the date on which the notice of objection was lodged.”</p> | <p>The bill proposes to rephrase the subsection by deleting the words “the Commissioner may make an objection decision within sixty days after the date on which the notice of objection was lodged” and substituting therefor the new words “the objection shall be deemed disallowed”;</p> | <ul style="list-style-type: none"> ▶ The bill proposes that failure to provide information within the specified period the objection shall be deemed disallowed. ▶ The proposed provision might not favor taxpayers as the same might introduce inefficiency on the part of KRA when it comes to misunderstandings with respect to documents to be provided as the default move would be to automatically disallow the objections. ▶ Further this will increase chances of the cases proceeding to TAT. ▶ Taxpayers should ensure all documents are provided when the objection is lodged and they should be agile and seek clarity in the event documents requested for are not clear. |
| <p>Production of records</p> <p>w.e.f. 1st July 2024</p> | <p>Section 51 subsection 11 states that The Commissioner shall make the objection decision within sixty days from the date of receipt of a valid notice of objection failure to which the objection shall be deemed to be allowed.</p> | <p>The bill proposes to give KRA more time by increasing the number of days from 60 days to 90 days to review objections from taxpayers.</p> | <ul style="list-style-type: none"> ▶ 60 days make KRA issue hurried decisions hence KRA is given more time to generate quality objection decisions. |
| <p>Production of records</p> <p>w.e.f. 1st July 2024</p> | <p>Not Applicable</p> | <p>The bill proposes to introduce a new provision after subsection 59A (1)</p> <p>The new provision provides for the integration of electronic tax systems, the Commissioner may by notice in writing, require a person to integrate its data management and reporting systems with KRA’s electronic tax systems.</p> | <ul style="list-style-type: none"> ▶ The amendment is in line with the future goal for KRA to integrate its systems with systems of various taxpayers in specific industries in a bid to access information in real time. This will be the first of many expected such changes. ▶ KRA would need to ensure the systems on their end are properly configured so as not to disrupt taxpayers operations on their end in instances where the integration is successful. |
| <p>Production of records</p> <p>w.e.f. 1st July 2024</p> | <p>Not Applicable</p> | <p>The bill proposes to add a new subsection immediately after subsection 59A (4) which proposes to criminalize any failure to adhere to the notice of the Commissioner to integrate such systems and penalize the offense to a penalty of not exceeding two million shillings for every month or part thereof that the failure continues.</p> | <ul style="list-style-type: none"> ▶ The bill proposes to include hefty penalties for failure to adhere with the notice under subsection 1A and subsection 2. The proposed penalty will be up to two million shillings for every month or part thereof that the failure continues. |

Tax Procedures Act

| Issue | Current Provision | Proposed provision as per Finance Bill 2024 | Our comments |
|--|---|---|--|
| <p>Due date for submission of return and payment of taxes</p> <p>w.e.f. 1st July 2024</p> | <p>Section 77 of the TPA act states that: If the date for—</p> <p>(a) submitting or lodging a tax return, application, notice, or the payment of a tax;</p> <p>falls on a Saturday, Sunday, or public holiday in Kenya, the due date shall be the previous working day unless where a person submits a notice of objection in electronic form or a tax return in electronic form, or pays the tax electronically, the due date shall remain the date specified in the relevant tax law.</p> | <p>The TPA is amended by repealing section 77 and replacing it with the following new section —</p> <p>77. In computing the period for—</p> <p>(a) submitting or lodging a tax return, application, notice, or other document;</p> <p>(b) the payment of a tax; or</p> <p>(c) taking any other action under a tax law,</p> <p>the period shall not include Saturdays, Sundays or public holidays.</p> | <ul style="list-style-type: none"> ▶ The bill proposes that Saturdays, Sundays and Public Holidays should not be taken into consideration while computing the due date for submitting or lodging a tax return, application, notice or any other document and also for payment of tax. ▶ With the introduction of the need to submit WHT and WHVAT returns and payments within five days, this change seems to be aligned in that line of thought to provide clarity on whether the 5 days are strictly business days. ▶ However, KRA must align the iTax system to calculate time based on business days. ▶ Further this would ideally lengthen the objection period for taxpayers when put in practice. |
| <p>Late submission penalty</p> <p>w.e.f. 1st July 2024</p> | <p>Not Applicable</p> | <p>The bill proposes to insert the following new subsection immediately after subsection (1)—</p> <p>(1A) An export processing zone enterprise that fails to submit a return as required under paragraph 4 of the Eleventh Schedule to the Income Tax Act shall be liable to a penalty of twenty thousand shillings per month for each month or part thereof that the failure continues.</p> | <ul style="list-style-type: none"> ▶ The eleventh schedule of the Income Tax Act provides guidelines on the taxation of export processing zone enterprises, and provides for a penalty of Ksh 2,000 for as long as the failure continues. The bill proposes to delete this section under the Income Tax Act. ▶ This amendment to the TPA is in line with the deletion of the penalty imposed under the eleventh schedule of the Income Tax Act and thus the TPA will be the procedural act governing the penalty for failure to file returns revising the penalty to Ksh 20,000 per month for each month that the failure continues. |
| <p>Transactions for which a PIN is required</p> <p>w.e.f. 1st July 2024</p> | <p>The First Schedule of the TPA highlights 15 paragraphs that state the transactions that require Personal Identification Numbers</p> | <p>The First Schedule to the Tax Procedures Act is amended by adding the following new paragraph immediately after paragraph 15—</p> <p>(16) Registration of an employee working remotely outside Kenya for an employer in Kenya.</p> | <ul style="list-style-type: none"> ▶ This is a welcome move for employers in Kenya as it will now be easier for them to engage employees residing outside Kenya on a more permanent basis other than as consultants since they will now be able to acquire KRA PINs and at the end KRA collects more tax via PAYE. |



Miscellaneous fees and levies



Miscellaneous Fees and Levies (w.e.f. 1st July 2024)

| Issue | Current Provision | Proposed provision | Our comments |
|--|---|--|--|
| Import declaration fee | The fee shall be at the rate of two point-five per cent of the customs value of the goods and shall be paid by the importer of such goods at the time of entering the goods for home use. | Increase in rate from 2.5% to 3% | ▶ The provisions indicate an increase on the import declaration fee imposed on the customs value. This implies that suppliers may be forced to increase the prices of commodities in the market as a recovery mechanism on the imported goods. |
| Import declaration fee funds | The monies in the Fund shall be used for the payment of Kenya's contributions to the African Union and any other international organisation to which Kenya has a financial obligation. | Ten percent of monies in the Fund shall be used for the payment of Kenya's contributions to the African Union and any other international organisation to which Kenya has a financial obligation, while twenty percent will be used for revenue enforcement initiatives or programmes | ▶ The proposed provisions promotes accountability of funds allocated to government based programmes for the benefit of the public. ▶ Further, the contributions made to the IGOs ensure cohesion among member states thus enhancing strong trade treaties. |
| Exemption from IDF and RDL on supplies to NIS | The Act currently exempts all goods including material supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service The Act had no prior provision | The Bill proposes to include the National Intelligence Service | ▶ This would mirror the VAT and Excise Duty exemptions also proposed by the Bill |
| Exemption from IDF and RDL and manufacturers of mosquito repellents | The Act had no prior provision | The Bill also proposes to exempt inputs, raw materials and machinery used in the manufacture of mosquito repellent on recommendation by the Cabinet Secretary responsible for matters relating to health from IDF and RDL | ▶ This is a move to reduce the cost of mosquito repellents in a bid to boost the fight against malaria. |
| Eco levy | The Act had no prior provision | The Bill proposes a new levy to be known as the eco levy on the goods specified in the Fourth Schedule manufactured in Kenya or imported into Kenya. a) In the case of locally manufactured goods, by the manufacturer at the time the goods are removed from the excise stock room; and b) In the case of imported goods, by the importer at the time of entering the goods into the country. The purpose of the levy shall be to ensure that the manufacturers and importers of the goods specified in the Fourth Schedule pay for the negative environmental impacts of the goods. | ▶ The introduction of the eco levy seeks to ensure manufacturers dealing with the production of bio hazardous commodities are held accountable on the effects of manufacturing or importation of the to the environment. This proposition affects both local manufacturers and importers to ensure the environmental sustainability objective is attained. ▶ The proposed provision under the fourth schedule provides for the goods that may be subject to the eco levy. The goods and proposed rates are discussed broadly in the subsequent pages of this alert under the "goods subject to eco levy under the fourth schedule" sections. ▶ The Bill also proposes to empower the Cabinet Secretary to make Regulations for the better implementation of the provisions of the Eco Levy. ▶ Some of the goods targeted are computers, printers, scanners, smart phones, diapers, tyres and batteries. |

Export and Investment Promotion Levy (w.e.f. 1st July 2024)

The Exports and Investments Promotion Levy seeks to provide funds for targeting the increase of investments in the country, boost manufacturing thereby creating more jobs and increasing exports. The Levy was introduced in 2023 targeting importers of select goods sourced from outside the East African Community (EAC).

The third schedule of the Miscellaneous Fees and Levies Act provides for goods to be subject to the Export and Investment Promotion Levy. The Finance Bill, 2024 proposes to repeal some provisions and include new provisions under the third schedule. The tariffs for the repelled provisions, amended provisions and new provisions are outlined as below.

Proposed exemptions from The Exports and Investments Promotion Levy

| Tariff No. | Tariff description | Current Levy Rate |
|------------|--|-------------------|
| 7213.91.10 | Bars and rods of iron or non-alloy steel, hot- rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross section measuring less than 8 mm | 17.50% |
| 7213.91.90 | Bars and rods of iron or non-alloy steel, hot- rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter; other | 17.50% |
| 4804.21.00 | Sack Kraft paper; Unbleached | 10% |
| 4804.31.00 | Other Kraft paper and paperboard weighing 150 g/m2 or less: Unbleached | 10% |
| 4819.30.00 | Sacks and bags, having a base of a width of 40 cm or more. | 10% |
| 4819.40.00 | Kraft liner | 10% |
| 4804.29.00 | Other sacks and bags, including cones. | 10% |

Proposed reduced rates in The Exports and Investments Promotion Levy

| Tariff No. | Tariff description | Current Levy Rate | Proposed Levy Rate |
|------------|--------------------|-------------------|--------------------|
| 2523.10.00 | Cement Clinkers | 17.50% | 10% |
| 4804.11.00 | Kraft liner | 10% | 3% |
| 7207.11.00 | Billets | 17.50% | 10% |

The Bill further proposes to exempt from The Exports and Investments Promotion Levy goods imported under a Special Operating Framework Agreement with the Government

Export and Investment Promotion Levy (w.e.f. 1st July 2024)

| Tariff No. | Tariff description |
|------------|--|
| 2207.20.00 | Denatured ethyl alcohol and other spirits |
| 2208.40.00 | Rum and other spirits obtained by distilling fermented sugar |
| 2208.60.00 | Vodka |
| 3401.30.00 | Organic surface-active products and preparations for washing the skin |
| 4804.29.00 | Uncoated Kraft paper and paperboard, in rolls or sheets, other than that of heading 48.02 or 48.03-Other |
| 0401.20.00 | Milk and cream of a fat content by weight, exceeding 1% but not exceeding 6% |
| 2207.20.00 | Denatured ethyl alcohol and other spirits |
| 2208.40.00 | Rum and other spirits obtained by distilling fermented sugar |
| 3401.30.00 | Organic surface-active products and preparations for washing the skin |
| 4804.29.00 | Uncoated Kraft paper and paperboard, in rolls or sheets, other than that of heading 48.02 or 48.03-Other |

| Tariff No. | Tariff description |
|------------|---|
| 69.10 | Ceramic sinks, wash basins, pedestals, baths, bidet, water closet pans, flushing cistern, urinals and similar sanitary fixtures |
| 7321.12.00 | Cooking stoves for liquid fuel |
| 8711.10.90 | Motorcycles with internal combustion engine not exceeding 50cc |
| 8711.20.10 | Motorcycles with internal combustion engine exceeding 50cc but not exceeding 250cc |
| 8711.20.90 | Motorcycles with internal combustion engine exceeding 50cc but not exceeding 250cc |
| 8711.30.90 | Motorcycles with internal combustion engine exceeding 250cc but not exceeding 500cc |
| 8711.40.90 | Motorcycles with internal combustion engine exceeding 500cc but not exceeding 800cc |
| 8711.50.90 | Motorcycles with internal combustion engine exceeding 800cc |
| 8711.60.00 | Electric motorcycles |
| 9403.10.00 | Metal furniture of a kind used in offices |
| 9403.20.00 | Other furniture metal |
| 9403.30.00 | Wooden furniture for office |
| 9403.40.00 | Wooden furniture for kitchen |
| 9403.50.00 | Wooden furniture for bedrooms |

| Tariff No. | Tariff description |
|------------|--|
| 9403.60.00 | Other wooden furniture |
| 9403.70.00 | Furniture of plastics |
| 9403.82.00 | Furniture of bamboo |
| 9403.83.00 | Furniture of rattan |
| 9403.89.00 | Furniture of cane, osier or similar material |
| 9403.91.00 | Parts of furniture, of wood |
| 9403.99.00 | Parts of furniture, not of wood |
| 9404.10.00 | Mattress supports |

The Bill proposes to impose the Export and Investments Promotion Levy on these items at a rate of 3% of the customs value

Goods subject to Eco Levy under the 4th schedule (w.e.f. 1st July 2024)

| H.S Code | Particular | Eco Levy Rate (Shs.) |
|--|--|----------------------|
| 8472.90.00 | Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin sorting machines, coin-counting or wrapping machines, pencil sharpening machines, perforating or stapling machines) – other. | 98 per unit |
| 8470.21.00 | Calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket- issuing machines and similar machines, incorporating a calculating device; cash registers –incorporating a printing device. | 225 per unit |
| 8471.30.00, 8471.41.00, 8471.49.00, 8471.50.00, 8471.60.00, 8471.80.00, 8471.90.00 | Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – | 225 per unit |
| 8472.90.00 | Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines) – other. | 225 per unit |
| 8473.30.00 | arts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 84.70 to 84.72.Parts and accessories of automatic data processing machines and units thereof – parts and accessories of the machines of heading 84.71. | 98 per unit |
| 8517.13.00, 8517.14.00, 8517.18.00, 8517.61.00, 8517.62.00, 8517.69.00 | Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 | 225 per unit |
| 8518.10.00 | Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets – microphones and stands therefor | 98 per unit |

Goods subject to Eco Levy under the 4th schedule (w.e.f. 1st July 2024)

| H.S Code | Particular | Eco Levy Rate (Shs.) |
|--|--|----------------------|
| 8519.81.00 | Sound recording or reproducing apparatus –using magnetic, optical or semiconductor media. | 98 per unit |
| 8525.50.00, 8525.60.00, 8525.81.00, 8525.82.00, 8525.83.00, 8525.89.00 | Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders | 98 per unit |
| 8526.91.00 | Radar apparatus, radio navigational aid apparatus and radio remote control apparatus – other: radio navigational aid apparatus. | 98 per unit |
| 8527.12.00, 8527.13.00, 8527.19.00, 8527.21.00, 8527.29.00, 8527.91.00, 8527.92.00, 8527.99.00 | Reception apparatus for radio broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock | 225 per unit |
| 8528.71.00, 8528.72.10, 8528.73.10, 8528.73.90 | Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus – | 1275 per unit |
| 8540.11.00 | Thermionic, cold cathode or photo cathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathode ray tubes, television camera tubes) – cathode-ray television picture tubes, including video monitor cathode-ray tubes: colour. | 1800 per unit |
| 8540.12.00, 8540.20.00 | Thermionic, cold cathode or photocathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathode ray tubes, television camera tubes) – | 1800 per unit |
| 9030.40.00 | Oscilloscopes, spectrum analysers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 90.28; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionising radiations – other instruments and apparatus, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers). | 98 per unit |

Goods subject to Eco Levy under the 4th schedule (w.e.f. 1st July 2024)

| Particular | Eco Levy Rate (Shs.) |
|---|----------------------|
| Rubber tyres of Chapter 40 | 1000 per unit |
| Diapers of Chapters 96 | 150 per kg |
| Batteries or dry cells of Chapter 85 | 750 per kg |
| Plastic packing materials of Chapter 39 | 150 per kg |

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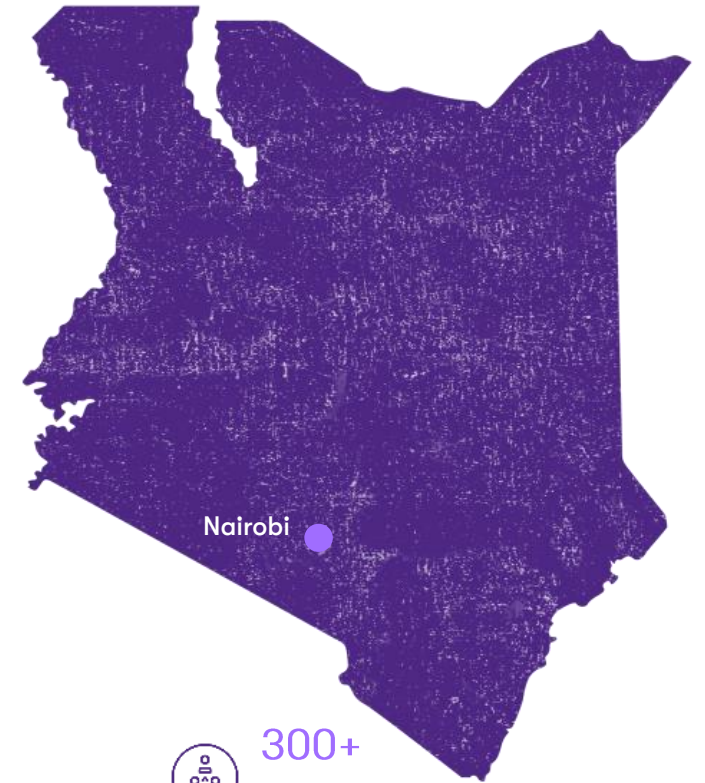
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