



RSM Newsletter

OVERVIEW OF THE KENYA FINANCE ACT, 2023

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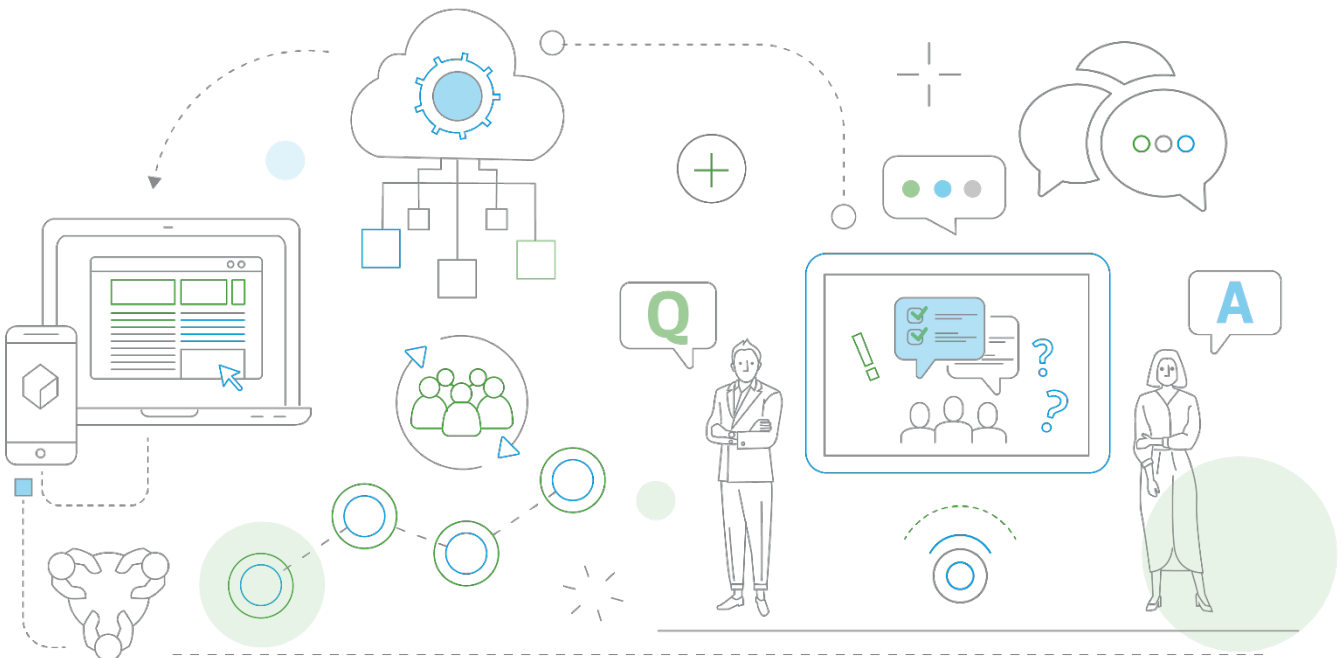
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INTRODUCTION

- The Finance Act ("the Act"), 2023 received Presidential assent on 26th June 2023. Most of the changes will be effective from 1st July 2023, which is the Government's fiscal year, while a few will be effective from 1st September 2023 and 1st January 2024.
- Most of the proposed changes in the Finance Bill, 2023 have been maintained in the Act with a few additions. This newsletter covers changes that were maintained in the Finance Act (maintained in colour grey), new additions that were not previously included in the Finance Bill (highlighted in colour blue, except headings) and proposals in the Finance Bill that were not passed as law by the Finance Act (highlighted in colour green, except headings).

Some of the legislative highlights are as follows:

- Removal of provision on application of waiver of penalty and interest.
- Increase in tax shortfall penalty on deliberate omission from 75% to 200%.
- The removal of 0% of fertiliser of Chapter 31 and their inputs, agricultural pest control products and their inputs and transportation of sugar canes from farmer to milling factories.
- The removal of exemption on goods and services used for the construction of tourism facilities, recreational parks, convention and conference services.
- The removal of the exemption of goods of tariff heading 3003.90.90, 3002.90.00.
- Exempting from VAT transfer of business as a going concern.
- The removal of exemption of capital goods used in the manufacturing sector.
- Removal of exemption plant, machinery and equipment used in the construction of a plastics recycling plant.
- Removal of exemption of taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities.
- Removal of 0% of inputs of medicaments supplied to pharmaceutical manufacturers in Kenya.
- The proposal to introduce a 20% deposit requirement for taxpayers appealing to the High Court from the Tax Appeals Tribunal refundable if the High Court decides in favour of the taxpayer.



DEFINITIONS – EFFECTIVE 1ST JULY 2023

The definition of “winnings” has been amended to “*the pay-out from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act excluding the amount staked or wagered in that transaction*”.

This means that withholding tax (WHT) on winnings is applicable on [the payouts excluding the staked amount in that transaction](#). The rate for both resident and non-resident remains 20%.



The Act introduces the following New Definitions:

| Term | Definition | Implications |
|--|--|--|
| “Digital content monetisation” | <p>means offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel, in any of the following forms—</p> <ul style="list-style-type: none"> a) advertisement on websites, social media platforms or similar networks by partnering with brands including endorsements from sellers of such brands; b) sponsorship where a brand owner pays a content creator for content creation and promotion; c) affiliate marketing where the content creator earns a commission whenever the audience of the content creator clicks on the product displayed; d) subscription services where the audience pays a periodic fee to access the content and support the content creator; e) Offering for use a logo, brand or catchphrase associated with the content creator merchandise sales, eBooks, course, or software; f) membership programmes for exclusive content including early access; g) licensing the content including photographs, music or other businesses or individuals for use in the user’s own projects; or h) commissions earned by a content creator from crowd funding. | <p>Digital content monetisation will be subject to WHT at the rate of 5% and 20% for non-residents without a permanent establishment in Kenya.</p> |
| “immovable property” includes— | <ul style="list-style-type: none"> a) land, whether covered by water or not, any estate, rights, interest or easement in or over any land and things attached to the earth or permanently fastened to anything attached to the earth, and includes a debt secured by mortgage or charge on immovable property; and b) a mining right, an interest in a petroleum agreement, mining information or petroleum information. | <p>The Act has deleted Section 3(3)(c)(i) on definition of immovable property which did not include the meaning of 'land'.</p> <p>With the change, the Act has expanded the definition of immovable property, to include land under Section 2.</p> |
| “person” includes | <ul style="list-style-type: none"> a) in the case of an individual, a reference to a relative now includes spouse, ancestors, uncles and aunts, nephews and nieces, and step father, mother and children and adopted children, and their spouses etc; and b) a company. | <p>This increases the scope of taxation of a person to comprise the family, which cannot be upheld in a Court of Law.</p> |
| “related person” | <p>means, in the case of two persons where a person who participates directly or indirectly in the management, control or capital of the business of another person.</p> | <p>Provides clarity on the definition of a related person.</p> |
| “institution, body of persons or irrevocable | <p>For purposes of Paragraph 10 of the First Schedule of the Income Tax Act, the Act has provided clarity that such institutions are required to be more transparent and accountable without restriction or discrimination regardless of the level of charges or</p> | <p>Persons seeking tax exemptions on basis of provision of poverty relief, advancement of religion or</p> |

| Term | Definition | Implications |
|-------------------------------|---|--|
| trust, of a public character" | fees levied for services rendered, and which utilises its assets or income exclusively to carry out the purpose for which the entity was established without conferring a private benefit to an individual. | advancement of education will undergo more stringent requirements to obtain and maintain income tax exemption. |
| "all loans" | "means loans, overdrafts, ordinary trade debts, overdrawn current accounts or any other form of indebtedness for which the company is paying a financial charge, interest, discount or premium, but shall not include local loans." | Interest restriction will explicitly apply to foreign loans. |

RESTRICTION ON INTEREST EXPENSE

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

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

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

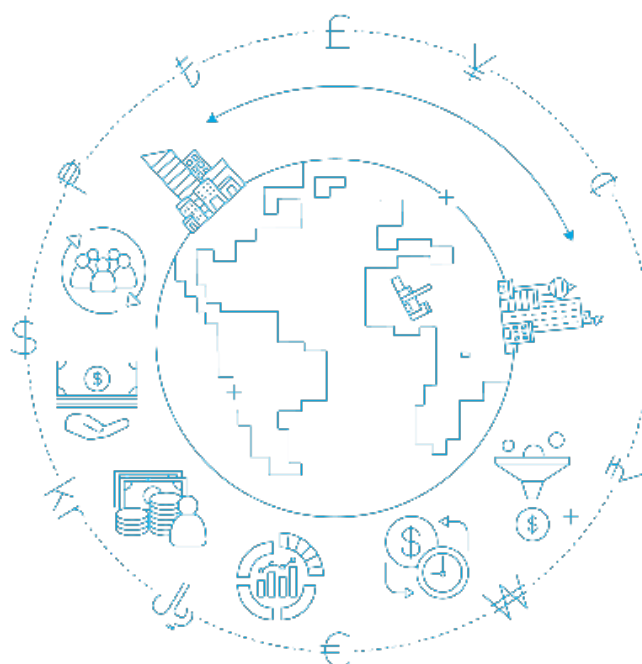
Manufacturing companies with cumulative investment of at least KShs five billion will no longer enjoy exemption from the interest restriction.

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

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

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

Any realized forex losses disallowed by virtue of interest paid to non-residents exceeding 30% of the EBITDA may be deferred and claimed within 5 years.



CHANGES TO TAXATION OF EMPLOYMENT INCOME

New PAYE Rates (Effective 1st July 2023)

The Act revises the current PAYE bands as follows:

| PAYE BANDS (ANNUAL) | RATE IN EACH SHILLING |
|------------------------------------|-----------------------|
| On the first KShs. 288,000 | 10% |
| On the next KShs. 100,000 | 25% |
| On the next KShs. 5,612,000 | 30% |
| On the next KShs. 3,600,000 | 32.5% |
| On all income over KShs. 9,600,000 | 35% |

Currently, all employment income above KShs. 388,000 is subject to PAYE at the rate of 30%. The Act introduces new tax brackets for all incomes up to KShs. 6 million at 32.5% and incomes above KShs. 9.6 million at 35% as the Government seeks to boost the tax revenues.

Additional Taxable Employment Gains (Effective 1st July 2023)

Club entrance and subscription fees ~~disallowed~~ allowed against the employer's income will be taxable on the employee.

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

The following will not be deemed to be taxable employment benefits:

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

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

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

Exemption from Income Tax (Effective 1st July 2023)

Investment income from a PRMF shall be exempt from income tax, whether or not the fund is part of a retirement benefits scheme. This is a welcome move as it will encourage the uptake of PRMF policies.

Computing Market Value of Shares under Employee Share Ownership Plans (ESOP's) (Effective 1st July 2023)

For shares fully listed on any security exchange in Kenya, the market value of shares under ESOP will be determined based on the the fair-market value on *the date the option was exercised by the employee*. Prior to the Finance Act, 2023 the value was determined based on the date the shares were granted by the employer.

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

Taxation of Shares Issued in Lieu of Cash Emoluments by Start-ups (Effective 1st January 2024)

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

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

The value of the taxable benefit shall be the fair market value of the shares at the earlier of the occurrence of the events contemplated in paragraphs (a), (b) or (c); or where the fair market value is not available, the Commissioner shall determine the value of the shares based on the last issued financial statements.

Taxation of Shares Issued in Lieu of Cash Emoluments by Start-ups (Effective 1st January 2024) (continued)

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

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

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

Income of a Married Woman or Wife (Effective 1st July 2023)

The Act has deleted Section 15(7) (e) (iii) which provided that the gains or profits derived from wife's employment income are considered as a separate source of income.

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

TAXATION OF NON-RESIDENT PERSONS

Reduced Income Tax Rate for a Permanent Establishment (PE) (Effective 1st January 2024)

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

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

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

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

*Net Assets means the total book value of assets less total liabilities for the year of income and shall not include revaluation of assets. The tax on repatriated profit shall be in addition to tax chargeable on the income of the PE. The repatriated profits will be taxed at a rate of 15%.

Allowable deductions for non-residents with a PE (Effective 1st July 2023)

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

- Remuneration to non-whole-time non-resident directors of a non-resident company who have a controlling interest of more than 5% of the income of that company; and
- Executive and general administrative expenses incurred outside Kenya by a non-resident person.

TURNOVER TAX (TOT) – EFFECTIVE 1ST JULY 2023

The Act introduces a revised threshold for TOT from *KShs. 1 million – 50 million* to *KShs. ~~0.5 million – 25 million~~ 1 million – 25 million* and increases the TOT rate from 1% to 3%.

This will mean that SMEs with income above KShs. 25 million currently registered under the TOT regime will now be required to pay tax at the corporate rate of 30% on taxable profits. Further, taxpayers eligible for TOT will be subject to the same at 3%.

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

The Act introduces Digital Assets Tax (DAT) at the rate of 3% on the transfer or exchange value of digital assets.

The owner of a platform or the person who facilitates the exchange or transfer of a digital asset shall deduct the DAT and remit it to the Commissioner within ~~24 hours~~ **5 working days** after making the deduction together with a return of the amount of the payment and the amount of tax deducted. A non-resident person who owns a platform on which digital assets are exchanged or transferred shall register under the simplified tax regime.

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

"Digital asset" includes:

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

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

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

This tax will be payable within 5 working days from the earlier of date of accrual or receipt of payment and will be payable irrespective of the profitability of the same.

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

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

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

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

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

However, the Act does not prescribe the preferential tax rate that will apply on the income from IP. Therefore, taxpayers may not be able to enjoy this new benefit until the ITA is amended to prescribe a specific preferential tax rate.

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

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

The Act repeals the provision that allowed members' club or trade association to elect to be deemed to be carrying on a business chargeable to tax.

Prior to the enactment of the Finance Act 2023, if the income received from members constitutes at least 75% of the gross receipts (excluding gross investment receipts) of the members' club or trade association, the gross receipt (excluding gross investment receipts**) is not subject to tax.

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

TAXATION OF COMPANIES MANUFACTURING HUMAN VACCINES

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

Further, the Act widens the scope of this tax benefit to reduce the Income Tax on companies undertaking other manufacturing activities (such as refining) human vaccines manufacturing activities from 30% to 10% (Effective 1st July 2023).

On the other hand, the Act exempts the following from tax (Effective 1st July 2023):

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

TAXATION OF COMPANIES ASSEMBLING MOTOR VEHICLES LOCALLY

Companies assembling motor vehicles locally are taxed at a reduced rate of 15% for the first five years which can be extended by a further five years if the company achieves a "local content" equivalent to 50% of the ex-factory value of the motor vehicles.

The Act defines "local content" as *parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya* (effective 1st July 2023).

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

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

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

The Act has revised the MRI rate from 10% to 7.5%. This is a welcome move to encourage resident landlords to comply with MRI.

TAXATION OF TRUST INCOME – 1ST JULY 2023

Any amount received by a beneficiary from a trust or paid out from a trust on behalf of a beneficiary shall be deemed to be taxable income in so far as the amount is received/paid out from income that is ordinarily subject to income tax.

Prior to the Act, only the following incomes of a registered trust, were subject to income tax from 1st July 2021:

TAXATION OF TRUST INCOME – 1ST JULY 2023 (CONTINUED)

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

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

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

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

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

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

- Club fees including entrance and subscription fees; and

DEDUCTIBLE AND NON-DEDUCTIBLE EXPENSES – EFFECTIVE 1ST JANUARY 2024 (CONTUNUED)

- Interest expense (to a maximum of KShs. 300,000 per year of income) incurred by an individual on a loan issued by a Co-operative Society registered under the Co-operative Societies Act for the purpose of purchase or improvement of residential premises.

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

The Act introduces a new definition of Ultimate Parent Entity (UPE). Under the Act, a UPE means an entity that:

- is not controlled by another entity; and
- owns or controls, directly or indirectly, one or more constituent entities of a multinational enterprise group.

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

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

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

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

WITHHOLDING TAX (WHT) – EFFECTIVE 1ST JULY 2023

WHT on Rental Income

Rental Income Tax Agent (persons receiving rental income on behalf of the owner of the premise) appointed by the Commissioner shall be required to deduct WHT at 7.5% from the rental income and remit it to the Commissioner ~~within 24 hours~~ *within 5 working days* after the deduction together with a return specifying the amount of the payment and the amount of tax deducted.

Prior to enactment of Finance Act, 2023, the WHT was due on 20th of the following month.

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

Neither the Act nor the ITA provides that the tax withheld on rental income is final. Therefore, the appointment of a Rental Income Tax Agent has the potential to create a double-withholding risk on the same rental income where a tenant is appointed as a rental income-withholding agent and the landlord's agent is appointed a rental income withholding agent. Further, the Act does not propose any remedy for landlords who suffer double-withholding on the rental income.

WHT on sales promotion, marketing and advertising services

The Act re-introduces WHT in respect to sales promotion, marketing and advertising services offered by residents at the rate of 5% *regardless of the amount*.

WHT on Digital Content Monetisation (DCM)

DCM will be subject to WHT at the rate of *5% for residents and 20% for non – residents not having a PE*.

WHT on Adjusted Expenses (Effective 1st July 2023)

Where a payment has been made to a non-resident person, withholding tax paid thereon shall not be refundable or available for deduction against the income of the payer where an audit adjustment has been made in respect of such payment.

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

INVESTMENT ALLOWANCE

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

Whereas the Finance Bill, 2023 proposed to replace Section 15(2)(g) to allow taxpayers to claim a 100% deduction of the value of any implement, utensil or similar article employed in the production of gains or profits, the Finance Act deletes the paragraph in the ITA but fails to provide a replacement for the same.

Due to this omission in the Act, taxpayers will not be able to claim a deduction for diminution of value for the aforementioned tools. Taxpayers may opt to expense the entire value of the tools as opposed to capitalising the same.

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

The Act introduces Industrial Building allowance at a rate of 10% per annum and dock allowance at a rate of 10% per annum on straight-line basis.

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

The Act also widens the definition of manufacture to include refining. Therefore, persons involved in refining will now enjoy deductions of investment allowance with regard to their buildings and machinery.

To enhance clarity on capital deduction, the Act introduces the following definitions:

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

Investment Deductions

Where a taxpayer has an accumulative investment of at least KShs. 2 Billion in the preceding three years in Nairobi City County and Mombasa County on or before 25th April 2020, the applicable rate for investment deduction is currently at 100%. The Act restricts this investment deduction to hotel buildings, buildings used for manufacture and machinery used for manufacture.

ADVANCE TAX ON COMMERCIAL VEHICLES – EFFECTIVE 1ST JANUARY 2024

The Act revises:

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



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

The Act expands incomes subject to CGT to encompass the following:

- a) the whole of the gains which accrued to a partnership on or after 1st January 2015, on the transfer of property situated in Kenya; or
- b) gains derived from the alienation of shares or comparable interests, if, at any time during the year preceding the alienation, the shares or comparable interests derived more than 20% of their value from immovable property situated in Kenya; or
- c) gains, other than those to which subparagraph (a) applies, derived from the alienation of shares of a resident company if the alienator, at any time during the year preceding such alienation, held at least 20% of the capital of that company:

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

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

The Act changes the due date for CGT from the date of the transfer to the earlier of:

- a) receipt of the full purchase price by the vendor; or
- b) registration of the transfer.

The Act seeks to provide further guidance on the exemptions for CGT on internal restructuring where it would now be a requirement for the group to have existed for a period of at least two years for any restructuring to be exempted from CGT.

Following the above amendments, capital gains enjoyed by partnerships from the transfer of immovable property will be subject to CGT at the partnership level and not at the individual level. This will reduce the tax compliance burden for the partners in partnerships as CGT will be payable by one person (the partnership) instead of all the partners based on their revenue sharing agreements.

Further, alienation of shares (or comparable interests) that have immovable property forming at least 20% of their underlying value shall be subject to CGT.

Gains derived from the alienation of shares of a resident company if the alienator (in the preceding 365 days) directly or indirectly held at least 20% of the capital of the company shall now be subject to CGT.

Ordinarily, a person transferring property that they acquired in a CGT exempt transfer is required to denote the adjusted cost in the later transfer as the fair market value of the property at the time they acquired it through the exempt transfer. However, if such persons opt to transfer such property within 5 years of acquiring it, they shall be required to denote the adjusted cost in the later transfer as the adjusted cost declared in the exempt transfer. This may significantly increase CGT on the disposal of inherited property and property transferred during group restructuring if such disposals are done within 5 years of the initial transfer.

Going forward, CGT will be due at the earlier of registration of the transfer or receipt of the full purchase price by the vendor.

CHANGES UNDER THE SPECIAL ECONOMIC ZONE ("SEZ") ENTERPRISES – EFFECTIVE 1ST JULY 2023

The Act introduces an exemption for gains on transfer of property within a SEZ enterprise, developer and operator.

A further exemption is granted on royalties, interest, management fees, professional fees, training fees, consultancy fee, agency or contractual fees paid by a special economic zone developer, operator or enterprise, in the first ten years of its establishment, to a non-resident person.

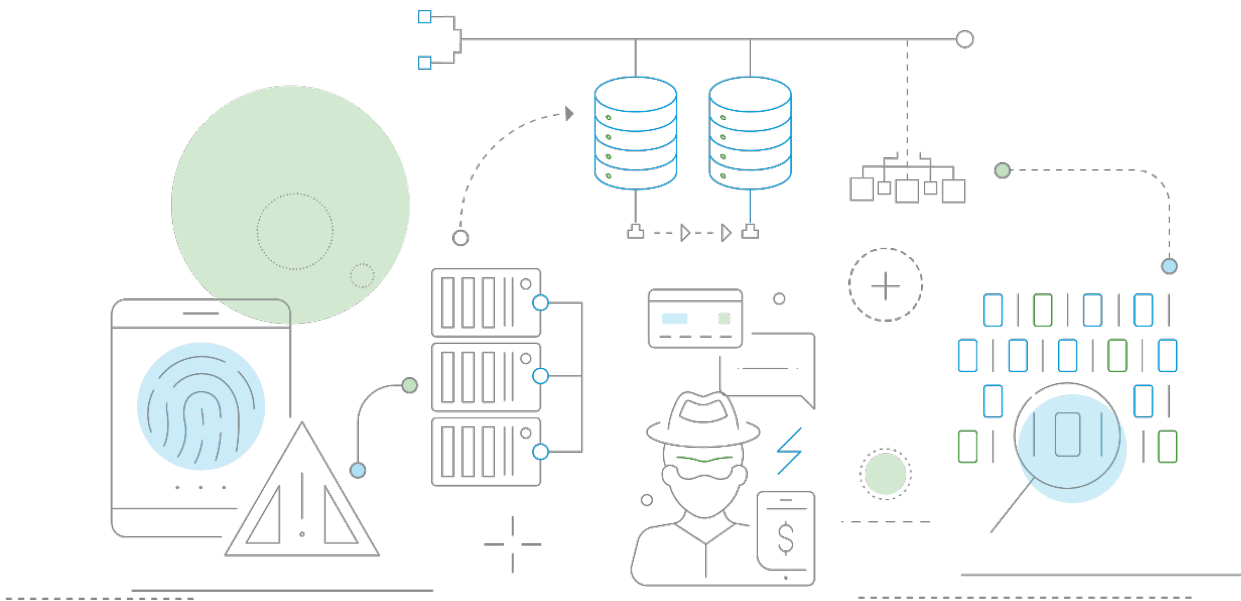
This is a welcome move to SEZ enterprises; as such, exemptions would encourage more economic development for these enterprises. However, this amendment may be construed as only exempting property transfers within an entity thereby negating the objective of the exemption as a transfer within a company is not subjected to Income Tax.

NON – RESIDENTS INVOLVED IN A 100% GRANT FUNDED PROJECT – EFFECTIVE 1ST JULY 2023

The Act provides an exemption for non-resident contractors, sub – contractors, consultants or employees involved in the implementation of a project that is financed 100% by a grant under an agreement with the Government of Kenya and the development partner to the extent provided for in the agreement.

MISCELLANEOUS CHANGES

- To ensure gender neutrality, the Act amends Section 31(b) (c) by deleting the word "his" and "he" as well as "his employer"; and substituting it with "the individuals" and "the individual's employer" (Effective 1st July 2023).
- The Act has widened the list of financial institutions (for income tax purposes) to include mortgage refinance companies licenced under the CBK Act (Effective 1st January 2024). As a result of this amendment, interest paid to such mortgage refinance companies will be exempt from withholding tax.



INDIRECT TAXES

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

GENERAL PROVISIONS

Exportation of taxable services

In line with the Organisation for Economic Cooperation and Development (OECD) destination principle, the Act has zero-rated the exportation of taxable services. While the Bill proposed to exempt the exportation of taxable services from VAT, this is a welcome change as it will promote exportation of services from Kenya as the service industry is currently less competitive due to the charging of VAT.

Input VAT deductibility

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

Refund of VAT paid on bad debts

The Act has amended one of the provisions that allows a person to apply for a refund on VAT paid on bad debts by deleting the requirement for the debtor to be declared legally insolvent, and replacing this with the debtor being placed under statutory management through the appointment of an administrator, receiver or liquidator. The Act has further extended the time in which a supplier who has not received payment for the taxable supplies made to claim the refund from four to ten years from the date of the supply.

This is a welcome move, as it means that creditors will not need to wait for the debtor declared insolvent before applying for a refund on the bad debts. The supplier will simply need to wait for the debtor to be placed under statutory management for them to make an application.

The Act has further extended the time in which a supplier, who has received a refund of VAT on bad debts but has thereafter recovered the tax from the debtor, to remit the recovered tax to the Commissioner within sixty days of recovery. However, the VAT Act already provides 30 days to remit the same therefore contradicting this new addition.

Place of supply rules for services

The Act deems supplies made by non-resident persons to resident persons (whether registered or unregistered) as made in Kenya. This means that non-resident suppliers will now be required to register and account for VAT. Currently, the onus to account for VAT on imported services made to any Kenyan resident person is on the Kenyan resident.

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

Time of supply

The Act has amended the time of supply with regard to the national carrier (Kenya Airways) shall be the date of delivery of goods or performance of services.

Insurance compensation

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

Compensation excluding VAT will be an additional cost of 16% to the taxpayer.

This creates ambiguity as insurance compensation by insurers is out of scope for VAT purposes thus the compensation is never inclusive of VAT. Given that the supply of money is excluded from the definition of the term "supply of goods", this creates further ambiguity as insurance compensation is mostly in the form of money. Further, this may negatively impact the cash flow of taxpayers.

Digital Services

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

Record Keeping

The Act now allows business records to be kept anywhere in the world; not necessarily in Kenya. This is to accommodate foreign suppliers registered for VAT and digitization of records.

HEALTH SECTOR

- The Act aims to lower the cost of healthcare by availing vast exemptions to the sector. These include diagnostic tools, inputs for pharmaceutical manufacturers and their products, ophthalmic instruments, appliances and apparatuses.
- The Act reintroduces exemption on goods for use in construction and equipping of specialised hospitals with a minimum bed capacity of **fifty**.
- Prior to the Act, goods, inputs and raw materials imported or locally purchased by a human vaccine manufacturer under a special operating framework arrangement with the Government whose capital investment is at least KShs. 10 billion is exempt, subject to approval of the CS for the National Treasury and Health. However, the Act now restricts this exemption to services only.
- The Act has now extended the current VAT exemption on importation of plant and machinery of Chapter 84 and 85 to include local purchases of the same by manufacturers of pharmaceutical products or investors in the manufacture **and refining** of pharmaceutical products, upon the recommendation of the CS for Health.

VAT RATE CHANGES

| Supplies | New Rate | Old Rate |
|--|---------------|----------|
| HEALTH SECTOR | | |
| Anti-sera, other blood fractions and immunological products | 16% | Exempt |
| Fetal Doppler-Pocket (Wgd-002) Pc and pulse oximeter-finger held (Gima brand) Pc | 16% | Exempt |
| Other medicaments, containing hormones or other products of heading No. 29.37 and containing antibiotics | Exempt | 16% |
| Tariff code 3004.90.90 - other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale | 16% | Exempt |
| Tariff code 3003.90.10 - infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale | 16% | Exempt |
| Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption | Exempt | 16% |
| CONSTRUCTION SECTOR | | |
| Plant, machinery and equipment used in the construction of a plastics recycling plant | 16% | Exempt |
| Taxable goods and services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks For the purposes of this paragraph, "recreational parks" means an area or a building where a person can voluntarily participate in a physical or mental activity for enjoyment, improvement of general health, well-being and the development of skills | 16% | Exempt |
| ENERGY SECTOR | | |
| Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel) | 0% | Exempt |
| Liquefied petroleum gas | 0% | 8% |

| Supplies | New Rate | Old Rate |
|---|----------|----------|
| Fuel (petrol, kerosene, and spirits) | 16% | 8% |
| The supply of solar and lithium ion batteries | 0% | 16% |
| AGRICULTURAL SECTOR | | |
| All tea sold for the purpose of value addition before exportation subject to approval by the Commissioner of Customs | 0% | 16% |
| Inputs or raw materials locally purchased or imported for manufacturer of animal feeds | 0% | 16% |
| TRANSPORT SECTOR | | |
| Inbound international sea freight offered by a registered person | 0% | 16% |
| The supply of motorcycles of tariff heading 8711.60.00 | 0% | 16% |
| The supply of electric bicycles | 0% | 16% |
| The supply of electric buses of tariff heading 87.02 | 0% | 16% |
| OTHER | | |
| Milk, specially prepared for infants | 16% | Exempt |
| The supply of locally assembled and manufactured mobile phones | 0% | 16% |
| Taxable supplies made to or by a school feeding programme recognized by the Cabinet Secretary responsible for matters relating to education | Exempt | 16% |

TARIFF NUMBERS AND DESCRIPTION CHANGES UNDER THE FIRST SCHEDULE

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

| Previous tariff No. | Previous description | New description | New tariff No. |
|---------------------|---|--|----------------|
| 3003.39.00 | Other medicaments, containing hormones or other products of heading No. 29.37 but not containing antibiotics, not put up in measured doses or in forms or packings for retail sale | Other medicaments, containing hormones or other products of heading no. 29.37, not put up in measured doses or in forms or packings for retail sale | 3003.39.00 |
| 3004.20.00 | Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale | Other medicaments containing antibiotics, put up in measured doses or in forms or packings for retail sale | 3004.20.00 |
| 3004.32.00 | Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale | Other medicaments containing hormones or other products of heading 29.37 containing corticosteroid hormones, their derivatives or structural analogue of tariff | 3004.32.00 |
| 3006.20.00 | Blood-grouping reagents | Blood-grouping reagents | 3822.13.00 |
| 3006.60.00 | Chemical contraceptive preparations based on hormones or spermicides | Chemical contraceptive preparations based on hormones or on other products of heading 29.37 or spermicides | 3006.60.00 |
| 9021.50.00 | Other artificial parts of the body: Pacemakers for stimulating heart muscles, excluding parts and accessories | Pacemakers for stimulating heart muscles, excluding parts and accessories | 9021.50.00 |
| N/A | 49. Aircraft parts of heading 8803, excluding parts of goods of heading 8801 | 49. All goods and parts thereof of chapter 88 | N/A |
| N/A | 71. Perforated PE film 15–22 gsm of tariff number 3921.90.00 | 71. Printed and unprinted Perforated PE film of other plastics 15–22 gsm of tariff numbers 3921.90.10 and 3921.90.90 | N/A |
| N/A | 119. Diagnostic or laboratory reagents, of tariff number 3822.00.00 on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 30.02 or 30.06, certified reference materials upon approval by the Cabinet Secretary responsible for matters relating to health | 119. Diagnostic kits or laboratory reagents and their certified reference materials of heading 3822 upon approval by the Cabinet Secretary responsible for matters relating to health | N/A |
| N/A | 120. Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, 9018.20.00, 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health | 120. Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, and other apparatus, Instruments and appliances of tariff numbers 9018.20.00, 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health | N/A |
| N/A | 122. Other instruments and appliances, including surgical blades, of tariff number 9018.49.00, 9018.50.00, 9018.90.00 used in dental sciences upon approval by the Cabinet Secretary responsible for matters relating to health | 122. Other instruments and appliances, used in dental sciences of tariff 9018.49.00, Other ophthalmic instruments and appliances of tariff 9018.50.00 and other instruments and appliances of tariff number 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health | N/A |

DELETION OF INFLATION ADJUSTMENT

- The Finance Act, 2023 has repealed Section 10 of the Excise Duty Act which empowers the Commissioner to adjust the excise duty rate on excisable goods.
- Prior to the amendment, the Commissioner was empowered by Section 10 of the Excise Duty Act to adjust the specific excise duty rates on excisable goods on 1st October of every year to account for inflation.
- Following this change, the Commissioner will no longer be able to adjust the excise duty rates on excisable goods.
- This is a welcome move as it creates stability in the excise duty rates on goods listed in Part I of the First Schedule to the Act.

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

- The Finance Act, 2023 has amended Section 20(5) of the Excise Duty Act to require the Commissioner (in instances where it issues a notice of rectification) to grant a taxpayer (whose excise licence has been suspended) at least 14 days from the date it receives the notice to complete the rectification of the deficiencies that resulted in the suspension of the licence.
- Prior to this change, the Excise Duty Act, 2015 lacked a minimum period within which a taxpayer could be granted to rectify a defect that led to a suspension of their excise licence. As a result, the Commissioner had absolute discretion on the amount of time they would give a taxpayer to rectify the deficiency.
- To put the above in context, a person whose excise licence is suspended may appeal against the notice of suspension under Section 20(4) of the Excise Duty Act. The Commissioner has the powers to revoke the suspension, cancel the licence or issue the taxpayer with a written notice specifying:
 - i. the actions required to remedy the deficiencies that led to the suspension; and
 - ii. the time within which these actions need to be completed (a minimum period of 14 days).
- This amendment is a welcome move as it will ensure that all taxpayers issued with a notice of rectification have at least 14 days to remedy deficiencies.

DAILY REMITTANCE OF EXCISE DUTY ON MANUFACTURERS OF ALCOHOLIC BEVERAGES

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

DAILY REMITTANCE OF EXCISE DUTY ON BETTING AND GAMING

- The Finance Act 2023 now requires betting and gaming service providers to remit excise duty before the end of the following day.
- Further, the Act now empowers the Commissioner to place taxpayers in other sectors under this daily remittance regime.
- Prior to this amendment, all licensed persons were required under Section 36(1) and (2) to remit excise duty by the twentieth day of the following month.
- This amendment is concerning as the Commissioner may now require other industries to remit excise duty on a daily basis which may present administrative and challenges.

CHANGE TO DEFINITION OF "AMOUNT WAGERED OR STAKED"

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



CHANGES TO EXCISE DUTY RATES AND INTRODUCTION OF NEW ITEMS

| Goods | New Rate | Old Rate |
|--|---|---------------------|
| Imported fish | 10% | N/A |
| Powdered juice | KShs. 25 per kg | N/A |
| Imported sugar excluding imported sugar by a registered pharmaceutical manufacturer | KShs. 5 per kg | N/A |
| Imported cement | 10% of the value or KShs. 1.50 per kg, whichever is higher | N/A |
| Imported furniture of Tariff heading 9403 excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin | 30% | N/A |
| Imported cellular phones * Reclassified from excisable services to excisable goods | 10% | 10% |
| Disassembled or unassembled kits for local assembly or manufacture mobile phones | 0% | 10% |
| Imported paints, varnishes and lacquers of heading 3208, 3209 and 3210 | 15% | N/A |
| Imported non-virgin Test liner of heading 4805.24.00 | 25% | N/A |
| Imported non-virgin fluting medium of heading 4805.19.00 | 25% | N/A |
| Imported articles of plastic of tariff heading 3923.30.00 and 3923.90.90 | 10% | 10% |
| Motorcycles of tariff 87.11 other than motorcycle ambulances, locally assembled motorcycles and electric motor cycles | KShs.10,000 a unit | Kshs.10,000 a unit |
| Imported white chocolate of heading 1704; imported chocolate and other food preparations containing cocoa of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00 | KShs. 257.55 per kg | KShs. 257.55 per kg |
| Condensates per 10001@ 20degC | N/A | KShs. 6,225 |
| Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products) | 35% | 25% |
| Imported Alkyd | 20% | 10% |
| Imported Unsaturated polyester | 20% | 10% |
| Imported Emulsion VAM | 20% | 10% |
| Imported Emulsion - styrene acrylic | 20% | 10% |
| Imported Homopolymers | 20% | 10% |
| Imported Emulsion B.A.M | 20% | 10% |
| Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90 | 25% | N/A |
| Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 | 25% | N/A |
| Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00 | 25% | N/A |



| Services | New Rate | Old Rate |
|--|----------------------|----------|
| Telephone and internet data services | 15% | 20% |
| Fees charged for money transfer services by banks, money transfer agencies and other financial service providers | 15% | 20% |
| Excise duty on fees charged for money transfer services by cellular phone service providers or payment service providers licensed under the National Payment System Act, 2011 *fees charged by payment service providers under the NPS Act (other than cellular phone service providers) are currently not subject to excise duty | 15% | 12% |
| Fees charged by payment service providers licenced under the National Payment Systems Act, 2011 (other than cellular phone service providers) | 15% | N/A |
| Excise duty on betting (on the amount wagered or staked) | 12.5% 20% | 7.5% |
| Excise duty on gaming (on the amount wagered or staked) | 12.5% 20% | 7.5% |
| Excise duty on the amount paid/charged to participate in a prize competition | 12.5% 20% | 7.5% |
| Excise duty on the amount paid/charged to buy the lottery ticket (excluding charitable lotteries) | 12.5% 20% | 7.5% |
| Fees charged on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions | 15% | N/A |

OFFENCES RELATING TO EXCISE STAMPS

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

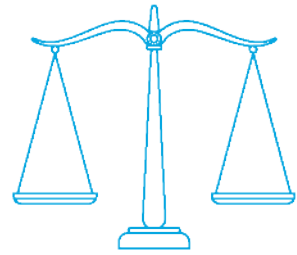
DEFINITION OF THE TERM "EXCISE CONTROL"

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

TAX PROCEDURES ACT, 2015

DEFINITION OF A TAX DECISION – EFFECTIVE 1ST JULY 2023

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



ENFORCEMENT OF INTERNATIONAL TAX AGREEMENTS – EFFECTIVE 1ST JULY 2023

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

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

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

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

- The Act has empowered the Commissioner to establish an electronic system through which a taxpayer is required to issue tax invoices and maintain records of electronic tax invoices and information relating to stocks.
- However, the Act has excluded from this requirement emoluments, imports, investment allowances, [airline passenger ticketing](#), interest and similar payments.
- The Act has also empowered the Commissioner to exempt a person from the above requirement through a Gazette notice.
- This amendment aligns with the amendment to Section 16 of Income Tax Act, which has restricted the allowability of expenses to only invoices generated through the electronic system unless exempted by the Commissioner.

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

- The Act has deleted Section 37 of the Tax Procedures Act (TPA), which grants the Commissioner powers to abandon recovery of taxes.
- The Finance Act has also amended Section 89 of the Tax Procedures Act, to bar a taxpayer from making an application for remission of penalty and interest and approval of such an application by the Commissioner. This means that going forward, taxpayers will not apply for waiver of penalties and interest arising from non-compliance and neither will the Commissioner have powers to grant such waivers.

TAX AMNESTY – EFFECTIVE 1ST SEPTEMBER 2023

- Following the Voluntary Tax Disclosure Program (VTDP) introduced by the Finance Act, 2020 covering the 5 year period prior to 1st July 2020 (i.e. 1st July 2015 to 30th June 2020), the Act has introduced a new Section 37E to the TPA which refrains the Commissioner from collecting any penalties, interest, or tax debt where a person had paid all the principal taxes by 31st December 2022.
- The Act has further allowed taxpayers who were yet to settle all the principal taxes accrued on or before 31st December 2022, to apply for amnesty of penalty and interest on the outstanding amounts provided that such taxpayers enter into a payment plan with the Commissioner. The waiver will only be applicable to penalties and interest on unpaid principal tax up to 31st December 2022 with the condition that such unpaid principal tax is paid by 30th June 2024.
- Following the enactment of the Act, a full waiver of penalties and interest will be granted for all principal taxes paid by 31st December 2022.
- However, the Act has excluded from the amnesty, any tax avoidance penalties and interest incurred by taxpayers.

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

- The Act has repealed Section 42(14) which previously barred the Commissioner from issuing an agency notice unless the Commissioner has confirmed its assessment through an Objection Decision and the taxpayer has defaulted to appeal to the Tax Appeals Tribunal within the prescribed timelines.
- Instead, the Act has amended the Section to bar the Commissioner from issuing agency notices unless:
 - the taxpayer has defaulted in paying an instalment under Section 33(2) of the TPA;
 - the Commissioner has raised an assessment and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period;
 - the taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines;
 - the taxpayer has made a self-assessment and submitted a return but has not paid the taxes due before the due date lapsed; or
 - the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or Court.
- Following this amendment, the Commissioner will have an expanded scope on circumstances under which he can issue agency notice. Further, the Commissioner will be empowered to issue an agency notice as early as a day after the due date has lapsed when one has filed a self-assessment.

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

- The Act has amended Section 42(A) of the TPA, to limit the exemption from withholding VAT to only payments made for zero-rated supplies and to registered manufacturers who have invested at least three billion in the preceding three years from 1st July 2022.
- Previously, this exemption applied to zero-rated supplies and registered manufacturers whose value of investment in the preceding three years was at least three billion from the commencement of the TPA. This specifies that the exemption for manufactures is anchored to investment of at least three billion from for three years after 1st July 2022.
- The Act has also changed the remittance date of withholding VAT from the current timeline (by the 20th day of the month following the month in which the deduction is made) to within **five working days after the deduction is made**.
- The Act has also amended Section 42 (A) of the TPA to align offences related to withholding VAT to be where one fails to withhold VAT **within five working days after the deduction was made**.
- The payment deadline will create an administrative burden for taxpayers from a compliance perspective.

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

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

REFUND OF OVERPAID TAX – EFFECTIVE 1ST JULY 2023

- The Act has amended Section 47 of the TPA to allow overpaid taxes to be utilized in offsetting both outstanding tax debts and future tax liabilities. Previously, overpaid taxes were only used to offset future tax liabilities.
- With this change, where a taxpayer makes an application for refund of overpaid taxes, the Commissioner will be required to refund the cash within 6 months from the date of ascertainment of the refund, failure to which the overpaid tax shall be applied to offset the taxpayer's outstanding tax debt or future tax liabilities. Previously, the Act required the Commissioner to refund overpaid taxes within two years from the date of application failure to which the amount attracts an interest of 1% per month on the refundable amount.
- Further, the Act has increased the timelines for the Commissioner to ascertain a refund application from the current 90 days to 120 days for refunds undergoing audits, failure to which such an application shall be deemed to have been ascertained and approved.

OBJECTION TO TAX DECISION – EFFECTIVE 1ST JULY 2023

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

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

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

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

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

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

- where the payment is in any form of valuable consideration other than money, the particulars of the consideration; and
 - such other particulars as the Commissioner may specify.
- This system targets sectors at high risk of non-compliance.

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

- The Act has changed the penalty for failure to comply with electronic tax system from the previous KShs. 100 000 to [two times the tax due](#).
- In case of non-compliance, comply with that tax law, the Commissioner shall issue a notice in writing to the taxpayer requesting the reasons for the non-compliance before charging the penalty.
- The Act however has not provided timelines during which the taxpayer should respond to the Commissioner before the penalty is charged. Previously, the Tax Procedures Act, provided that a tax payer should furnish the Commissioner with reasons for non-compliance within 14 days.

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

- The Act has imposed imprisonment for a term not exceeding three years to a person convicted of an offence of impersonating an authorized officer.



DOCUMENTS THAT CONSTITUTE AN APPEAL TO THE TAX APPEALS TRIBUNAL

- Effective 1st July 2023, the Act has amended the components of an appeal to the Tribunal as follows:
 - i. replacing the term "tax decision" with "appealable decision" to ensure harmony with the Tax Procedures Act; and
 - ii. listing supporting documents as an integral part of an appeal.
- An appealable decision is an objection decision and any other decision made under a tax law other than a tax decision or a decision made in the course of making a tax decision.
- Prior to 1st July 2023, Section 13(2) of the Tax Appeals Tribunal Act required that an appeal be comprised of a memorandum of appeal, statement of facts and tax decision.
- Whereas taxpayers ordinarily file supporting documents as part of their appeal, there was no formal requirement for inclusion of the supporting documents. Some taxpayers have been submitting supporting documentation to the Tribunal through witness statements.
- As a result of the above, an appeal lacking supporting documents may be deemed to be defective thus may be struck out.



MISCELLANEOUS AMENDMENTS

MISCELLANEOUS FEES AND LEVIES ACT, 2016

IMPORT DECLARATION FEES RATES – EFFECTIVE 1ST JULY 2023

- The Act has amended the rate of IDF from 3.5% to 2.5% of customs value.
- The Act has scrapped the preferential IDF rate of 1.5% on:
 - Raw materials and intermediate products imported by manufacturers approved by the Cabinet Secretary responsible for matters relating to industry; and
 - Input for construction of houses under affordable housing scheme upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to housing.
- The Act has repealed the IDF preferential rate of 1.5% of customs value of goods imported under East Africa Community Duty Remission Scheme and standardizes the rate of IDF at 2.5%.
- The objective of this is to have a unified rate for IDF and to boost trade.



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

- The Act has introduced a new Levy; the Export and Investments Promotion Levy.
- The Levy shall be charged at the rate specified in the Third Schedule introduced to the Act as follows:

| Tariff No. | Tariff Description | New Rate |
|------------|---|----------------------------|
| 2523.10.00 | Cement Clinkers | 17.5% of the customs value |
| 7207.11.00 | Semi-finished products of iron or non-alloy steel containing, by weight, <0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness | 17.5% of the customs value |
| 7213.91.10 | Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross-section measuring less than 8 mm | 17.5% of the customs value |
| 7213.91.90 | Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter | 17.5% of the customs value |
| 4804.11.00 | Uncoated kraft paper and paperboard, in rolls or sheets; Kraft liner; Unbleached | 10% of the customs value |
| 4804.21.00 | Sack kraft paper; Unbleached | 10% of the customs value |
| 4804.31.00 | Other kraft paper and paperboard weighing 150 g/m ² or less; Unbleached | 10% of the customs value |
| 4819.30.00 | Sacks and bags, having a base of a width of 40 cm or more | 10% of the customs value |
| 4819.40.00 | Other sacks and bags, including cones | 10% of the customs value |

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

The Act has corrected the following tariff numbers:

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

| Tariff No | Tariff Description | New Rate | Old Rate |
|------------|--|--|------------------------|
| 4101.20.00 | Whole unsplit hides and skins, of a weight per skin not exceeding 8 kg, when simply dried, 10 kg when dry salted, or 16 kg. when fresh, wet salted or otherwise preserved | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4102.21.00 | Raw skins of sheep or lambs (pickled, but not tanned, parchment-dressed or further prepared), without wool on whether or not split, other than those excluded by Note 1(c) to Chapter 41 | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4102.29.00 | Other raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), without wool on, whether or not split, other than those excluded by Note (c) to Chapter 41 | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4103.20.00 | Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or (c) to this Chapter, of reptiles | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4103.30.00 | Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), but not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter, of swine | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4103.90.00 | Other raw hides and skins other than of reptiles, swine, goats or kids | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4104.19.00 | Other tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared, in the wet state (including wet - blue) | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4101.50.00 | Whole hides and skins, of weight exceeding 16 kg | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4101.90.00 | Other, including butts, bends and bellies | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4102.10.00 | Raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1(c) to Chapter 41 | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4301.10.00 | Raw furskins of mink, whole, with or without head, tail or paws | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4301.60.00 | Raw furskins of fox, whole, with or without head, tail or paws. | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4301.80.00 | Other raw furskins, whole, with or without head, tail or paw | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4301.90.00 | Heads, tail, paws, and other pieces or cuttings, suitable for furriers' use | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4302.11.00 | Whole skins, with or without head, tail or paws, not assembled, of mink | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4302.19.00 | Other whole skins, with or without head, tail or paws, not assembled | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |

| | | | |
|------------|--|--|------------------------|
| 4302.20.00 | Heads, tails, paws and other pieces or cuttings, not assembled | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4301.60.00 | Raw furskins of fox, whole, with or without head, tail or paws | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4301.30.00 | Raw furskins of lamb, the following: Astrkhan, broadtail, Caracul, Persian and similar lamb, Indian, Chinese, Mongolian or Tibetan lamb, whole, with or without head, tail or paws | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |
| 4302.30.00 | Whole skins and pieces or cuttings thereof, assembled | 50% or USD 0.32 per kg whichever is higher | 80% or USD 0.52 per kg |

RAILWAY DEVELOPMENT LEVY RATES – EFFECTIVE 1ST JULY 2023

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

EXPORT LEVY RATES – EFFECTIVE 1ST JULY 2023

The Act has now stripped the Commissioner of the power to impose inflationary adjustments on export levies. This is a welcome move as it offers stability in the price of exports, making Kenyan exports attractive in foreign markets.

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

| Tariff No | Tariff Description |
|------------|--|
| 8105.00.00 | Bismuth and articles thereof including waste and scrap |
| 8109.30.00 | Waste and scrap of zirconium |
| 4101.40.00 | Hides and skins of equine animals |
| 8107.30.00 | Waste and scrap of cadmium. |
| 8110.20.20 | Waste and scrap of antimony. |

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

| Tariff Description | New Tariff No. | Previous Tariff No. |
|-----------------------------|----------------|---------------------|
| Tin waste and scrap | 8002.00.00 | 8002.00.10 |
| Waste and scrap cadmium | 8112.61.00 | 8107.30.00 |
| Waste and scrap of antimony | 8110.20.00 | 8110.20.20 |

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

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

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

- The Act has exempted from IDF goods for official use by diplomatic and consular missions, the United Nations and its agencies, institutions or organizations exempted under the Privileges and Immunities Act.
- The Act has expanded the items exempt from IDF on import of aircraft to include all goods and parts thereof of Chapter 88 (Aircrafts, Space crafts and parts thereof including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation).
- The Act has expanded items exempt from IDF to include all goods including material supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defense Forces and National Police Service.
- It has now included the following new items in the list of exemptions:
 - Goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya; and
 - Liquefied petroleum gas.
 - [Denatured ethanol of tariff number 2207.20.00.](#)
 - [Bioethanol vapor \(BEV\) stoves classified under HS Code 7321.12.00 \(cooking appliances and plate warmers for liquid fuel\).](#)
 - [Goods imported for other manufacturing activities including refining of human vaccines.](#)
- The Act has removed the exemption of RDL on goods imported by the United Nations and its Agencies.
- The Act has exempted from RDL goods for official use by diplomatic and consular missions and institutions or organizations exempt under the Privileges and Immunities Act.
- It has expanded items exempt from RDL to include all goods including material supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defense Forces and National Police Service.
- It has exempted the following items from RDL:
 - Goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya;
 - Liquefied petroleum gas; and
 - All goods and parts thereof of Chapter 88 (Aircrafts, Space crafts and parts thereof including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation).
 - [Goods imported for other manufacturing activities including refining of human vaccines.](#)
 - [Denatured ethanol of tariff number 2207.20.00.](#)
 - [Bioethanol vapor \(BEV\) stoves classified under HS Code 7321.12.00 \(cooking appliances and plate warmers for liquid fuel\).](#)

BETTING, GAMING AND LOTTERIES ACT

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

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

KENYA ROADS BOARD ACT, 1999

COLLATION AND SUBMISSION OF ANNUAL ROADS PROGRAM - EFFECTIVE 1ST JULY 2023

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

KENYA REVENUE AUTHORITY ACT – EFFECTIVE 1ST JULY 2023

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

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

RETIREMENT BENEFITS ACT, 1997

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

EMPLOYMENT ACT, 2007

INTRODUCTION OF AFFORDABLE HOUSING LEVY – EFFECTIVE 1ST JULY 2023

- The Act has introduced a monthly levy, known as the Affordable Housing Levy, where both employees and employers are both subject to the levy at 1.5% of the employee's gross salary.
- The burden is on the employer to deduct and remit the Levy within 9 working days after the end of the month in which the payments are due. Employers who fail to comply with this provision shall be penalized at 2% of the unpaid funds, for every month the funds remain unpaid.
- The purpose of the Levy is to fund the Government's affordable housing agenda.

ALCOHOLIC DRINKS ACT, 2010

INTRODUCTION OF MINIMUM INPUT COST – EFFECTIVE 1ST JULY 2023

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

UNCLAIMED FINANCIAL ASSETS ACT, 2011

CLAIMS ON ASSETS – EFFECTIVE 1ST JULY 2023

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

STATUTORY INSTRUMENTS ACT, 2013

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

- The Act has eliminated the mandatory requirements for the review of subsidiary legislation and expiration of statutory instruments.



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

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

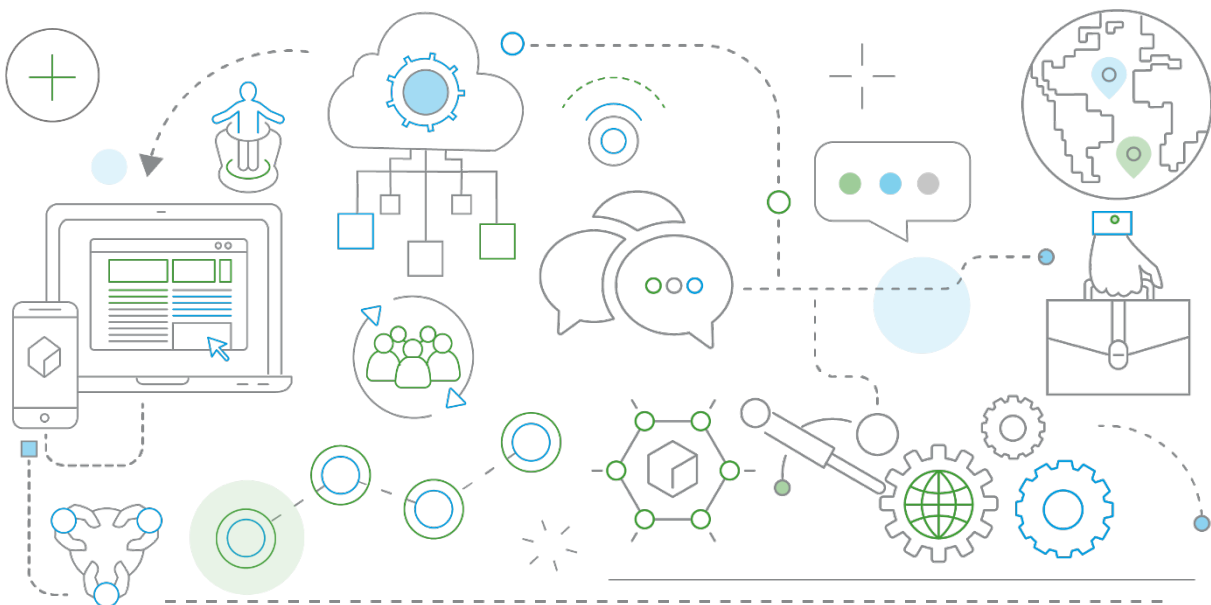
- The Act has amended the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 to repeal Section 4, which was declared unconstitutional by the Court. Additionally, the Act provides for payment of pension to entitled persons who hold an appointive or elective position in Government. Further, the Act now allows designated persons to enjoy both designated persons pension and Parliamentary pensions.
- The Act however does not allow an entitled person to enjoy the retired benefits under the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 while they hold an elected or appointed office.
- The Act allows an entitled person's child who is below 18 years of age or is under 25 years of age and is undergoing a course of full-time education, or in the case of a female child who is not married and not cohabitating with any person to be entitled to full medical and hospital cover, providing for local and overseas treatment.
- The Act also amends the benefits available to a retired Speaker of the National Assembly or the Senate, by removing their entitlement to a lump sum payment on retirement.
- The Act has repealed Section 16 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015.
- The Act allows a retired Speaker of the National Assembly or the Senate, The Deputy Chief Justice or The Chief Justice to choose one chief liaison officer alternative to one personal assistant and one assistant liaison officer alternative to one secretary.

THE SPECIAL ECONOMIC ZONES ACT, 2015

- The Act has amended the definition of a special economic zone to allow both customs controlled and non-customs controlled areas to be designated as Special Economic Zones. Further, the development of zone infrastructure and goods introduced in customs-controlled area are exempted from customs duties. Specified services provided to the zone are not treated as exported services.
- The Act also exempts from customs duties, goods whose content originates from the customs territory. Goods whose content partially originates from the customs territory shall pay import duties on the non-originating components.

THE EXPORT PROCESSING ZONES ACT, 1990

- The Act has also exempted from customs duties, goods whose content originates from the customs territory. Goods whose content partially originates from the customs territory shall pay import duties on the non-originating components.



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