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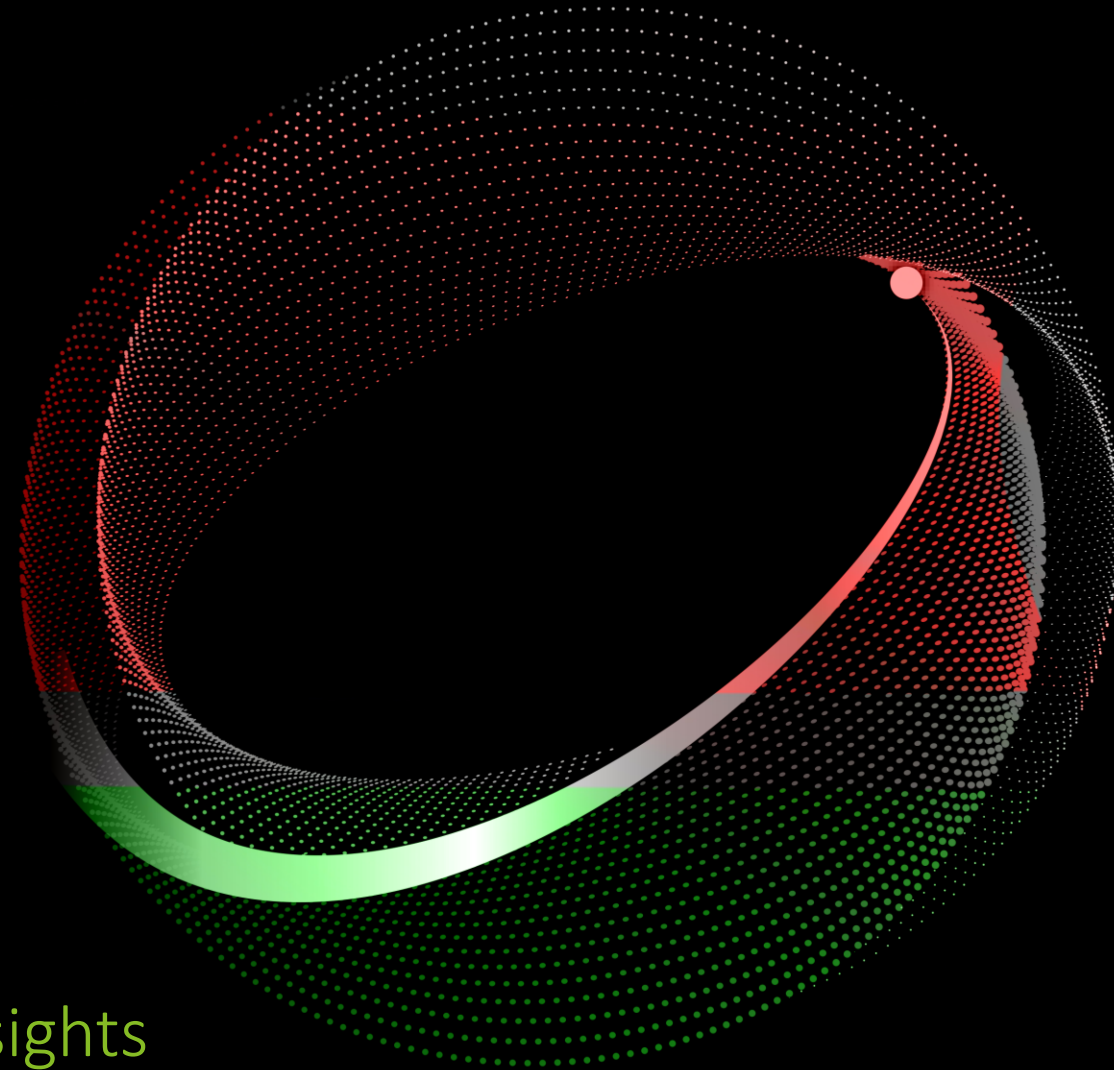

Finance Act 2023 Insights

Navigating headwinds for inclusive growth

SEPTEMBER 2023

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Finance Act 2023 Insights

Introduction

The President signed the Finance Act, 2023 (“the Act”) into law on 26 June 2023. The Act, which was published on 26 June 2023 in the special issue of the Kenya Gazette Supplement No. 97 (Acts No. 4), has introduced amendments to the various tax statutes in Kenya, and other laws such as the Unclaimed Financial Assets Act, the Employment Act, and the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015.

Although most of the changes introduced by the Act have an effective date of 1 July 2023, there are some changes whose effective date is 1 September 2023 and 1 January 2024.

The Act faced several huddles since its enactment. On Friday, 30th June 2023, the High Court temporarily suspended its implementation, pending the determination of a petition filed by Senator Okiya Omtatah and six other activists. On 10th July 2023, the High Court in its ruling, suspended the implementation of the Act and directed that the petition proceeds for hearing and determination. However, on 11th July 2023, the government moved to court arguing that among others, the suspension of the Finance Act had the effect of halting the core operations of the Government and the government stood to suffer great financial loss in reduced revenue collection. By a ruling delivered on 28th July 2023, the Court of Appeal lifted the suspension orders made by the High Court on 10th July 2023, a decision that was later upheld by the Supreme Court on 8th September 2023.

This publication outlines the changes introduced by the Act and their effective dates. The publication contains general information only and Deloitte is not, by means of this publication rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. While all reasonable care has been taken in the preparation of this publication, Deloitte and its associates accept no responsibility for any errors it may contain, whether caused by negligence or otherwise, or for any loss, however caused or sustained by any person who relies on it.

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Corporate Tax

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Corporate Tax

We outline the key corporate tax changes below.

#	Enacted change	Details	Our comments
I.	EBITDA-based interest limitation rule changes	• The Finance Act 2023 has amended the interest limitation rule in Section 16 (2) (j) of the Income Tax Act by: a) Introducing a provision that disallows only the total interest paid or payable to non-resident persons in excess of 30% of EBITDA; b) Introducing a provision that will entitle taxpayers to a deduction of the disallowed interest in the subsequent three years of income to the extent that the deduction of the interest does not exceed 30% of EBITDA; c) Excluding any interest that is exempt from income tax from the interest restriction rules; and d) Excluding the following companies from the list of entities exempted from the interest limitation rule: · Manufacturing companies engaged in manufacturing whose cumulative investment in the five years preceding 1 July 2022 is at least KES 5B; and · Companies engaged in manufacturing whose cumulative investment is at least KES 5B for investments made outside Nairobi City County and Mombasa County. • The Act has also amended the definition of the term "all loans" in section 16 (3) of the Income Tax Act to exclude loans secured from local sources. **Effective date: 1 January 2024.**	• The move will encourage domestic borrowing while at the same time discourage foreign borrowing which is in line with the repealed thin capitalization provisions. • The move to allow deductibility of disallowed interest in excess of 30% of EBITDA is positive since the previous provisions did not allow deduction of the amount when interest expense reduced to below 30% of EBITDA. • The removal of manufacturing entities from the list of exemption is likely to discourage investment in the sector since investments in the sector are capital intensive which in most instances require debt financing that may not be readily available in the domestic market.

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2.	Limitation on deductibility of deferred realized foreign exchange losses	• The Act has introduced a timeline of five years within which a deferred foreign exchange loss can be claimed upon realization by a company whose gross interest paid or payable to a non-resident person exceeds 30% of the company's EBITDA in any year of income. **Effective date: 1 July 2023.**	• The change aligns to the changes introduced on section 16 (2) (j) of the Income Tax Act to limit the interest limitation rule to interest paid or payable to non-resident persons in excess of 30% of EBITDA. • The provision offers clarity as to the timelines within which deferred foreign exchange losses can be claimed upon realization. The change is also positive in the sense that it introduces clarity on claiming of the deferred foreign exchange losses as the repealed provision only provided for deferral without indicating whether the same could be claimed. The provision will however introduce administrative challenges of tracking realization of deferred foreign exchange losses.

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#	Enacted change	Details	Our comments
3.	No deduction to be allowed where an invoice is not generated through e-TIMS	• The Act has introduced a provision prohibiting the deductibility of expenditure or loss, where invoices of the transactions are not generated from an electronic tax invoice management system ("e-TIMS") managed by the Kenya Revenue Authority. Only expenditure on transactions that have been exempted from the e-TIMS requirement in the Tax Procedures Act, 2015 (TPA) will be claimable without the e-TIMS invoice compliance. **Effective date: 1 January 2024.**	• The TPA has been amended to obligate all taxpayers carrying on business in Kenya to issue invoices through an electronic system except for emoluments, imports, investment allowances, interest, airline passenger ticketing and similar payments. • Whereas the provision is aimed at sealing revenue leakages, it will have the negative effect of increasing compliance costs to businesses as they set up systems in support of e-TIMS requirements. SMEs and MSMEs will most be affected.
4.	Club fees paid on behalf of an employee to be allowable	• The Act has amended section 16 (2)(a) of the Income Tax Act by deleting paragraph (v). The paragraph prohibits a deduction in respect of club fees including entrance and subscriptions except as provided for under section 15 (2) (v). **Effective date: 1 January 2024.**	• The amendment harmonizes section 16 (2) of the Income Tax Act to the amendment introduced by the Finance Act, 2020 which deleted Section 15 (2) (v). Deletion of Section 16(2)(a)(v) means that expenditure incurred on club subscriptions shall be allowed. • The Act has also amended Section 5(2) of the Income Tax Act to treat club entrance and subscription fees allowed against the employer's income as a taxable benefit on the employee.

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#	Enacted change	Details	Our comments
5.	Taxation of a permanent establishment (PE) of a foreign entity and repatriated income of the PE	• The Act has amended the Income Tax Act by reducing the corporate tax rate for branches of foreign companies from 37.5% to 30% (**Effective 1 January 2024**). • The Act has also amended the Income Tax Act by introducing Section 7B. The section, which will come into force on **1 January 2024**, introduces a tax on the repatriated income of a PE. • The Act has further introduced a tax of 15% on the repatriated income of a PE into the Income Tax Act's Third Schedule effective **1 July 2023**. • The repatriated income shall be computed as follows: **R=A1 + (P - T) – A2** Where— **R** is the repatriated profit; **A1** is the net assets at the beginning of the year; **P** is the net profit for the year of income calculated in accordance with generally accepted accounting principles; **T** is the tax payable on the chargeable income; and **A2** is the net assets at the end of the year. • The term "net assets" has been defined as the total book value of assets less total liabilities for the year of income excluding revaluation of assets.	• This amendment largely aligns the taxation of foreign companies that operate in Kenya through branches with their resident counterparts. • The only difference shall be on the deductibility of expenses payable by a branch to the head-office, which are not allowable on the branch.

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Corporate Tax

<table>
<tr><th>#</th><th>Enacted change</th><th>Details</th><th>Our comments</th></tr>
<tr><td>6.</td><td>Administrative expenses of a branch/ PE to be allowed</td><td>

Section 18, which guides the determination of the taxable income of a branch/ PE of a non-resident has been amended by deleting subsection 4.
The subsection prohibits a deduction in respect of expenditure incurred outside Kenya by a non-resident person other than expenditure in respect of which the Commissioner determines that adequate consideration has been given. The subsection lists the following expenditure as specifically disallowable:

- Expenditure in excess of KES 150,000 representing the remuneration for services rendered by the non-resident directors (other than whole-time service directors) of a non-resident company who have a controlling interest in the company; and

- Executive and general administrative expenses except to the extent that the Commissioner may determine the expenditure to be just and reasonable.

Effective date: 1 July 2023.</td><td>

The deletion of Section 18(4) demonstrates the government’s determination to align the taxation of a branch with that of a locally incorporated entity.
This is in addition to the amendment reducing the corporate tax rate of a branch from 37.5% to 30% and that introducing the 15% tax on the repatriated income of a branch.
However, one would also have hoped that section 18(5) of the Income Tax Act, which prohibits the deduction of management or professional fees, interest and royalties paid or purported to be paid by a branch of a foreign company to its head-office, would be deleted.
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#	Enacted change	Details	Our comments
7.	Turnover tax band and rate revised	• The Act has amended Section 12C of the Income Tax Act to reduce the upper threshold for applicability of turnover tax from KES 50 million to KES 25 million. The turnover range within which turnover tax shall apply will therefore be KES 1m to KES 25m. • The Third Schedule to the Income Tax Act has also been amended to increase the turnover tax rate from 1% to 3%. **Effective date: 1 July 2023.**	• The reduction in the turnover tax band is aimed at limiting the applicability of turnover tax to small and micro-businesses. • The increase in the rate is purely aimed at shoring tax revenue. However, the increase is quite steep, and could discourage compliance.
8.	Taxation of members' clubs and trade associations	• The Act has amended the tax regime of members' clubs and trade associations in Section 21 of the Income Tax Act by deleting subsections 1 and 2 and introducing the following provision in subsection 1: • *"a members' club or trade association shall be deemed to be carrying on a business and the gross receipts on revenue account (excluding joining fees, welfare contributions and subscriptions) shall be deemed to be income from a business."* **Effective date: 1 July 2023.**	• The main implication of this amendment is that trade associations will no longer be required to elect to the Commissioner to be taxed. • Further, joining fees, welfare contributions and subscriptions for both a trade association and a members' club shall be exempt from tax.

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#	Enacted change	Details	Our comments
9.	Clarity on charitable institutions exempt under paragraph 10 of first schedule	• The Act has amended paragraph 10 of the First Schedule by introducing a proviso that restricts the applicability of income tax exemptions that require the Commissioner's approval to institutions established to benefit the public in a transparent and accountable manner without discrimination and whose assets and incomes are used exclusively for the purpose without conferring any private benefit to an individual. **Effective date: 1 July 2023.**	• This amendment aims at introducing restrictions on the applicability of income tax exemptions that require the Commissioner's approval. • However, unless the Commissioner provides further guidelines on this provision, the amendment may be prone to abuse.
10.	Introduction of industrial building and Dock investment allowances	• The Act has amended the Second Schedule of the Income Tax Act to introduce "Industrial Buildings" and "Dock" within the categories of assets that qualify for investment allowances. • Industrial buildings and docks will be subject to investment allowances at the rate of 10% per year on straight-line basis. • The terms industrial building and dock have been defined to mean: *"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.* **Effective date: 1 January 2024.**	• The re-introduction of the allowances which had been left out when the second schedule was overhauled by the Tax Laws Amendment Act, 2020 is a positive move, as it will attract investment in the sector. • Further the dock allowance will help cement Kenya's position as a transit hub for the region.

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#	Enacted change	Details	Our comments
11.	Expansion of the definition of Manufacture	• The Act has amended paragraph (f) of the proviso to Paragraph 1 of the Second schedule of the Income Tax Act to include refining as part of the definition of the word "manufacture" **Effective date: 1 January 2024**	• The amendment clears any ambiguity on whether the term “refining” qualifies as manufacture, and therefore eligible for accelerated capital allowances.
12.	Investment allowance on telecommunication equipment	• The Finance Act, 2023 has introduced the definition of “telecommunication equipment ”to include civil works deemed as part of the telecommunication equipment or civil works that contribute to the use of the telecommunication equipment. • The Act has also expanded the definition of civil works in the Second Schedule to include; earthworks for telecommunication equipment and construction works undertaken in connection with the installation and maintenance of telecommunication equipment and related structures. **Effective date: 1 January 2024**	• These amendments expand the applicability of investment allowances on telecommunication equipment to cover the cost of the equipment and costs incurred on civil works. The amendments will encourage investment in the telecommunication sector.

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#	Enacted change	Details	Our comments
13.	Restriction of the 100% accelerated investment allowance	• The Finance Act has introduced Paragraph 1B in the Income Tax Act's Second Schedule in order to restrict the applicability of the accelerated investment allowance of 100% specified in Paragraph 1A of the First Schedule. • Paragraph 1A entitles a person to claim an accelerated investment allowance at 100%: - Where the cumulative investment value in the preceding 3 years outside Nairobi City County and Mombasa County is at least KES 2B; - Where the investment value outside Nairobi City County and Mombasa County in the year of income under consideration is at least KES 250m; or - Where the person has incurred investment in a special economic zone. • Following the amendment, the accelerated allowance of 100% will only apply to hotel buildings, buildings used for manufacture and machinery used for manufacture. **Effective date: 1 January 2024.**	• The amendment aims to limit the scope of investments eligible for accelerated allowances, as was the case in the repealed Second Schedule.
14.	150% investment allowance on bulk storage and handling facilities	• The Finance Act has amended Section 133 of the Income Tax Act by extending the period for the application of the 150% investment allowance on expenditure of at least KES 5B incurred to construct bulk storage and handling facilities for supporting the SGR operations of at least 100,000MT, which was specified in paragraph 24 of the repealed Second Schedule by one more year. The applicability of the 150% allowance was to lapse on 31 Dec 2023. However, the Act has extended this to 31 Dec 2024. **Effective date: 1 January 2024.**	• The accelerated allowance of 150% was first introduced by the Business Laws (Amendment) Act, 2020, with effect from 18th March 2020. With the repeal of the Second Schedule effective 25th April 2020, there have been amendments every year to preserve this accelerated allowance.

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#	Enacted change	Details	Our comments
15.	Clarity on eligibility for Corporation tax rate of 15% after the initial five years for businesses in the local assembling of motor vehicles.	• The Act has introduced a definition for the "Local content" threshold required for an extension of the fifteen per cent corporation tax rate for a further five years. Local content has been defined to mean parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya. **Effective date: 1 July 2023**	• The amendment clears ambiguity as to what "local content" and introduces objectivity as to who qualifies and who does not qualify for the extension. • The enacted change will also work to spur local manufacturing of original motor vehicle parts enhancing availability of quality motor vehicle parts.
16.	Removal of tax exemption for companies undertaking the manufacture of human vaccines	• The Act has: - Deleted the income tax exemption for companies undertaking the manufacture of human vaccines **(effective 1 July 2023);** and - Introduced a reduced Corporate Income Tax (CIT) rate of 10% for such companies (**effective date: 1 January 2024).**	• Although the enacted 10% CIT rate is significantly lower than the normal CIT rate of 30%, the amendment will have the negative effect of discouraging investment in the sector while investors who might have been previously encouraged to invest in the sector due to the NIL tax may not take this enactment positively hence the need for a functional National Tax Policy to promote stability in taxation. • The deletion of the income tax exemption (effective 1 July 2023) effectively means that such companies will be taxable at the normal CIT rate of 30% up to 31 December 2023. This might have been an error, but it will have far reaching implications on the affected companies.

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#	Enacted change	Details	Our comments
17.	Reduction of the income tax rate on residential rental income	• The Act has reduced the residential rental income tax rate from 10% to 7.5% percent. **Effective date: 1 January 2024.**	• Whereas the reduction of the rate could result in shrinking of revenue to the Government in the short term, it will encourage compliance by residential property owners and spur investments in the real estate sector. This is expected to increase collection in the long term and assist the Government in achieving its goal of affordable housing for citizens.
18.	Increase in advance tax	• The Act has increased the rate of advance tax for vans, pick-ups, trucks, prime movers, trailers and lorries to KES 2,500 per tonne of load capacity or KES 5,000 per year whichever is higher. • Similarly, an increment has been proposed for saloons, station wagons, mini – buses and coaches at KES 100 per passenger capacity per month or KES 5,000 per year whichever is higher. **Effective date: 1 January 2024.**	• The motive of this amendment is to increase tax revenue. • However, the increment may disincentivize investment in the sector and other interconnected sectors such as the local assembling of the motor vehicles and the local manufacturing of original motor vehicle parts.
19.	Higher threshold for commissioner notification on indirect transfer of interest	• The Act has amended the Ninth Schedule to the Income Tax Act by increasing the threshold required by a contractor to notify the Commissioner if there is a change in the underlying ownership of a licensee or contractor from 10% to 20%. **Effective date: 1 July 2023.**	• This is a welcome change as it serves to curb unnecessary administrative procedures that occur upon change in such ownerships especially if they are regular.

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#	Enacted change	Details	Our comments
20.	Calculation of intellectual property income subject to preferential tax rate	• The Act has introduced a standard formula for determining intellectual property (IP) income qualifying for a preferential tax rate. • The qualifying IP income shall be determined using the following formula: **I = Q/T * P** Where: - **I** is the qualifying IP income; - **Q** is the research and development (R&D) expenditure made by the taxpayer, excluding acquisition costs and related party outsourcing costs; - **T** is the R&D expenditure including acquisition costs and related party outsourcing costs; and - **P** is the IP income, which include royalties, capital gains, and any other income from the sale of an IP asset. • Any intellectual property losses may only be offset against future IP income. **Effective date: 1 January 2024.**	• We believe this measure is aimed at encouraging R&D activities in Kenya by providing a preferential tax regime on IP income. • However, no information on the intent of the formula and the preferential tax rate has been provided. The amendment may therefore not achieve any impact, unless the omissions are addressed.

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#	Enacted change	Details	Our comments
21.	Country-by-country report (CbCR) filing changes	• The Act has amended the Income Tax Act to clarify that it is mandatory for an ultimate parent entity (UPE) resident in Kenya of a qualifying Multinational Enterprise ("MNE") group to file a CbC report. • A UPE is an entity which is not controlled by another entity; and owns or controls, directly or indirectly, one or more constituent entities of an MNE. • Constituent entities in Kenya of qualifying MNEs will be required to file their group CbC reports in Kenya where at least one of the following conditions applies: - The UPE is not obligated to file the CbCR in the jurisdiction of its tax residence. - The UPE's jurisdiction of tax residence has signed an international tax agreement (ITA) but does not have a competent authority agreement (CAA) with Kenya at the time of filing the CbCR for the reporting financial year. - There has been a systemic failure of the UPE's jurisdiction of tax residence of which the Constituent entity in Kenya has been notified by the Commissioner. • The ITA provides for exchange of tax information between signing jurisdictions while a CAA activates the sharing of country-by-country reports between parties to the ITA. • The qualifying MNEs are those with consolidated group turnover for the preceding year of at least KES 95 billion (approx. EUR 750 million) including extraordinary or investment income. • The due date for filing the CbCR is the end of 12 months after the reporting financial year end of the MNE. **Effective date: 1 July 2023**.	• The provisions clarifies the filing of CbC reports in Kenya. • It is mandatory for a UPE resident in Kenya to file CbC reports. • For MNEs controlled outside, a CbC Report will not be required if the UPE's jurisdiction of tax residence has signed a Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Report (MCAA) at the time of filing the CbCR. • CbCR will provide visibility to the KRA of the financial and related information for MNEs that will aid in assessing TP risks. For taxpayers, this means additional transfer pricing compliance and reporting requirements.

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#	Enacted change	Details	Our comments
22.	Payments from a registered family trust to its beneficiaries to be deemed to have been taxed	• The Act has deleted subsection 3A of Section 11 of the Income Tax Act, which was introduced through the Finance Act, 2021. • The subsection deems amounts paid out by a Trustee of a registered family trust to its beneficiaries to be income subject to tax, unless the amounts relate to the following: - 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 KES 10 million in the year of income; or - 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. **Effective date: 1 July 2023.**	• The amendment reinstates the treatment that applied prior to the amendment by the Finance Act, 2021 where the income of a registered family Trust was taxed in the hands of its Trustees as opposed to the beneficiaries.

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Dropped

Corporate Tax

The following proposal contained in the Finance Bill, 2023 was not enacted

#	Dropped change	Details	Our comments
1.	Diminution allowance	The Finance Bill had proposed to amend Section 15(2)(g) of the Income Tax Act by introducing a rate of 100% for the deduction representing the diminution in value of any implement, utensils or tools employed in the production of gains or profits. The Finance Bill seemed to have had the intention to enact this proposal into law. However, the new paragraph has been left out of the Act. As such, the current paragraph which states that the deductible amount is the “amount considered by the Commissioner to be just and reasonable” still prevails.	• The change would have simplified the computation of diminution allowance while at the same time aligning the allowance to the accounting useful life of the implement, utensils and tools which in most instances is one year. • The referenced new paragraph should be included in the section to ensure there is no lacuna in law.

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Withholding Tax

We outline the key withholding tax changes below

#	Enacted change	Details	Our comments
1.	Introduction of withholding tax (WHT) on payments made in respect of digital content monetization at a rate of 5% and 20% for residents and non-residents, respectively.	• The Act has amended the ITA by introducing certain provisions that subject payments made in respect of digital content monetisation to withholding tax at the rate of 5% and 20% for residents and non-residents, respectively. • The term "digital content monetisation" has been defined as: **"digital content monetisation"** means offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel, in any of the following forms: a) advertisement on websites, social media platforms or similar networks by partnering with brands including endorsements from sellers of such brands; b) sponsorship where a brand owner pays a content creator for content creation and promotion; c) affiliate marketing where the content creator earns a commission whenever the audience of the content creator clicks on the product displayed; d) subscription services where the audience pays a periodic fee to access the content and support the content creator; e) merchandise sales where physical goods and services are sold featuring a logo, brand or catchphrase to the audience of the content creator, eBooks, courses, or software; f) membership programmes for exclusive content including early access; g) licensing the content including photographs, music or other businesses or individuals for use in the user's own projects; or h) crowdfunding for raising funds for specific goals for a content creator or another person. **Effective date: 1 July 2023.**	• The digital content creation continues to be popular in Kenya due to increased access to internet, digital marketing, youthful population, availability of gadgets and use of social media. • The move to introduce withholding tax on payments made in respect of digital content monetization can be viewed as efforts by the Government to tap into this area as it widens the tax net. The tax may also streamline tax compliance within this sector taking note that revenue earned by digital content creators will be tracked by the revenue authority. • Notwithstanding our comments above, it is noteworthy that any payment that is subject to withholding tax should first be deemed to be income accrued in or derived from Kenya under Section 10 of the ITA for a payer to have a legal basis to deduct tax. • However, the Act has not amended the relevant provisions to deem digital content monetization payments as income accrued in or derived from Kenya. This means there is a lacuna in law and payers may not be able to deduct the tax.

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Enacted

Withholding Tax

#	Enacted change	Details	Our comments
2.	Introduction of withholding tax at 5% on payments in respect to sales promotions, marketing and advertising services to resident persons and permanent establishments	• The Act has amended various sections of the ITA to introduce withholding tax at 5% on payments made to persons resident or having a permanent establishment in Kenya in respect of sales promotions, marketing and advertising services. • Similar payments to non-residents are already subject to the WHT but at the non-resident rate of 20%. **Effective date: 1 July 2023.**	• In the spirit of fairness, WHT deduction has been extended to payments made to residents in respect to sales promotions, marketing and advertising services. Previously, WHT deduction on these payments were only applicable to non-residents since its introduction in the year 2020 through the Tax Laws (Amendment) Act, 2020. • The imposition of WHT on these payments will enable the Government enhance compliance in this industry by tracking the revenues earned by the respective service providers and enforcing compliance. • Key to note, however, is that the imposition of WHT on such services from residents would not amount to the imposition of additional tax burdens but rather, would be a mechanism to collect tax in advance from transactions that constitute payments for sales promotions, marketing, and advertising services – tax of which shall be considered a credit in computing an impacted taxpayer's annual taxable income.

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Withholding Tax

#	Enacted change	Details	Our comments
3.	Withholding tax to be remitted to the Commissioner within five working days	• The Act has amended Section 35 (5) of the ITA by requiring taxpayers to remit WHT to the Commissioner within five working days. • Previously, taxpayers were required to remit WHT on or before the twentieth day of the month following the month in which the deduction was made. **Effective date: 1 July 2023.**	• Requiring taxpayers to remit withholding tax within five working days after deducting tax on qualifying payments will exert strenuous pressure on taxpayers to meet the expected obligation. Taxpayers will be forced to monitor the nature of their transactions and remit WHT on qualifying payments on a weekly basis. • The revised statutory obligation due dates will lead to increased compliance cost and administrative burden for both taxpayers and the Kenya Revenue Authority, contrary to the tax canon of convenience and economy.
4.	Appointed rental agents to remit withholding tax on behalf of property owners	• The Act has amended the ITA by requiring appointed property agents who receive and collect rental income on behalf of property owners to remit WHT to the Commissioner within five working days. The rental agents will also be expected to file with the Commissioner a return of the tax deducted and any other information required by the Commissioner. • Upon receipt of payment, the Commissioner will, in turn, furnish the person from whom the rental income tax was withheld with a certificate stating the amount of the rent and tax deducted therefrom. **Effective date: 1 July 2023.**	• The change tasks rental agents, who receive and collect rental income on behalf of property owners, with the responsibility of deducting and remitting tax to the Commissioner. The new obligation seeks to reign in on unscrupulous landlords who fail to comply or where circumstances do not allow the landlords to remit tax directly. • This tax measure may improve revenue collection since rental agents will compel landlords to account for taxes. However, the requirement to remit taxes within five working days will be an administrative burden for rental agents.

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Withholding Tax

#	Enacted change	Details	Our comments
5.	Reduction of the withholding tax rate on rent from 10% to 7.5%	• The Act has amended Section 5 (ja) of the Third Schedule to the ITA to effectively reduce withholding tax rate from 10% to 7.5% on payments made in respect of rent, premium or similar consideration for the use or occupation of immovable property. **Effective date: 1 January 2024.**	• This is a welcome move for landlords and property owners since less advance tax will be suffered, easing cashflow pressures. We note that this change is also aligned to the reduction in residential rent income tax rate from 10% to 7.5%. • It is our expectation, that the reduced rates will encourage tax compliance, and effectively increase tax revenues.
6.	Withholding tax on winnings to be based on net payouts, exclusive of the amounts staked or wagered in those transactions	• The Act has amended the definition of the term "winnings" to mean the payout 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 transactions. • Previously, the term "winnings" was defined to include winnings of any kind and a reference to the amount, or the payment of winnings shall be construed accordingly. **Effective date: 1 July 2023.**	• The amendment clarifies that withholding tax on winnings, which is currently at 20%, is to be based on the net payouts, exclusive of the amounts staked or wagered in those transactions. • There has been a lot of contention regarding this matter and the new amendment aims to reduce disputes between the Kenya Revenue Authority and taxpayers.

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Withholding Tax

#	Enacted change	Details	Our comments
7.	WHT paid on payments made to non-residents shall be forfeited in case of an audit adjustment	• The Act has introduced a provision under Section 10 of the ITA that will compel taxpayers to forfeit any WHT paid on a payment for which a subsequent audit adjustment is made. • The withholding tax paid shall not be refundable or available for deduction against income where an audit adjustment has been made in respect of such payment. **Effective date: 1 July 2023.**	• This amendment will largely affect intragroup service recharges between related parties, which is usually a focus of the revenue authority during transfer pricing audits. • This has been a bone of contention during transfer pricing audits where an adjustment is made on the service fees paid to related non- resident entities for which withholding tax had already been deducted and remitted. • This move will lead to double taxation on the taxpayer considering that the adjusted amount/ disallowed service fee is further taxed as deemed dividend under Section 7(b) (v) and thus subject to withholding tax at 15%.
8.	Interest and royalty payments paid to a non-resident person by a company undertaking the manufacture of human vaccines exempted from WHT	• The Act has exempted royalties and interest paid to a non-resident person by a company undertaking the manufacture of human vaccines from tax. Therefore, no withholding tax will be applied on such payments. **Effective date: 1 July 2023.**	• The amendment may attract investments in the human vaccine manufacturing sector in Kenya. • More incentives for this sector were introduced through the Finance Act, 2022.
9.	Investment income from post-retirement medical fund is exempted from WHT	• The Act has exempted investment income from a post-retirement medical fund from income tax. Withholding tax on such investment income will therefore not apply. **Effective date: 1 July 2023.**	• This amendment aims to encourage contributions towards a post-retirement medical fund and enhance access to universal health care.

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Withholding Tax

#	Enacted change	Details	Our comments
10.	Payments made to a non-resident contractor, sub-contractor or consultant involved in the implementation of a project financed through 100% grant under an agreement between the Government and its development partner exempted from WHT	• The Act has exempted income earned by a non-resident contractor, sub-contractor or consultant involved in the implementation of a project financed through 100% grant under an agreement between the Government and its development partner, provided that the non-resident is in Kenya solely for the implementation of the project financed by the one hundred percent grant. • Therefore, no withholding tax will be applied on payments to such parties. **Effective date: 1 July 2023.**	• The amendment seeks to attract grants and investments for the Government's partnership with its development partners.
11.	Payments in respect of royalties, interest, management or professional fees and training fees made by a SEZ enterprise to a non-resident to be exempt from WHT in the first 10 years	• The Act has introduced a tax exemption 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 10 years of its establishment. • This effectively means that there shall be no withholding tax on these payments in the first 10 years. The normal withholding tax rates of 5% should revert after the 10-year holiday. **Effective date: 1 July 2023.**	• This change is aimed at encouraging non-residents to invest in special economic zones.

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Digital Asset Tax

The Finance Act 2023 has introduced a new tax known as digital asset tax

#	Enacted Change	Details	Our comments
1.	Introduction of digital asset tax	• The Act has introduced “Digital Asset Tax” on the income derived by a person on transfer or exchange of digital assets. Digital Asset Tax will apply at the rate of 3% on the transfer or exchange value of the digital asset. • A non–resident person who owns a platform on which digital assets are exchange or transferred shall register under the simplified tax regime. • The Act has defined “*Digital asset*” to include: a) anything of value that is not tangible and cryptocurrencies, token code, number held in digital form and generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration that can be transferred, stored or exchanged electronically; and b) a non-fungible token or any other token of similar nature, by whatever name called. The Act has also defined “*income derived from transfer or exchange of a digital asset*” to mean the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset. • Digital Asset Tax shall be payable by the owner of the platform or the person who facilitates the exchange or transfer of a digital asset. • Digital Asset Tax shall be remitted within five working days after making the deduction, together with a return showing the tax deducted and any other information as may be required by the Commissioner. **Effective date: 1 September 2023**	• The introduction of Digital Asset Tax seeks to tax digital transactions involving digital assets, which have grown in prominence and scale in the recent past. • However, the digital asset market is particularly volatile, and is subject to fluctuations in prices over time. • The government could have considered basing Digital Asset Tax on the gains or income arising from the transaction, as this would have factored in any attendant costs or losses that might have been incurred in the transaction. • Further, the government could have considered harmonizing the Digital Asset Tax rate with the Digital Service Tax rate of 1.5%. • Moreover, requiring taxpayers to remit the tax within five working days will impose additional compliance obligations.

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Capital Gains Tax

The key amendments that affect Capital Gains are as outlined below.

#	Enacted change	Details	Our comments
1.	Expansion of the scope of CGT to include indirect transfers	• The Act has amended the Eighth Schedule to the Income Tax Act to include the following gains in the CGT scope: a) The gain arising from the transfer of shares or comparable interests inclusive of interests in a partnership or trust where at any time during the year preceding the transfer, the shares/comparable interests derived more than 20% of their value directly or indirectly from immovable property situated in Kenya; and b) The gain arising from the transfer of shares of a company resident in Kenya where the transferor, at any time during the year preceding the transfer, held directly or indirectly at least 20% of the capital of that company: • The Act has further introduced a requirement for transferors of shares to notify the Commissioner in writing where there is a change of at least 20% in the underlying ownership of the property. **Effective date 1 July 2023.**	▪ This amendment widens the scope of transactions subject to CGT to include indirect transfer of property. Prior to this amendment, indirect transfers did not fall within the ambit of the CGT regime. ▪ However, we note that the Act has not introduced any formula for determining the taxable capital gains on an indirect transfer. This creates a lacuna, and we believe the KRA shall issue guidance on this matter. ▪ There is already an existing formula for determining taxable gains for indirect transfers in the extractive sectors, which we believe might be adopted for purposes of this amendment. The taxable gain is computed as follows: **A x B/C** Where – - A is the amount of the net gain; - B is the value of the interest derived, directly or indirectly, from immovable property in Kenya; and - C is the total value of the interest.

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Capital Gains Tax

#	Enacted change	Details	Our comments
2.	Determination of adjusted cost for CGT	• The Act has introduced a new sub-paragraph immediately after Paragraph 8(4) of the Eighth Schedule to prescribe provisions for determining the adjusted cost of property on a taxable transaction whose previous transaction was exempt from CGT. • The new sub-paragraph is numbered as 4A, and provides that, "where property is transferred in a transaction that is not subject to capital gains tax, 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. **Effective date 1 July 2023.**	• This is an anti-avoidance provision to ensure that adjusted cost of a transaction is not artificially inflated. • Specifically, this provision aims to ensure that the adjusted cost of the property is not manipulated to reduce the taxable gains in subsequent transfers.
3.	Due date for the payment of CGT	• The Finance Act, 2023 has amended the due date for CGT payment to be the earlier of— a) receipt of the full purchase price by the vendor; or b) registration of the transfer. **Effective date 1 July 2023.**	• This amendment brings much needed clarity on the tax point for CGT. This may enhance compliance and reduce disputes with the Kenya Revenue Authority on timelines for payment of CGT. • Currently, the due date for payment of CGT is on or before the date of application for transfer of the property is made at the relevant Lands Office.

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Capital Gains Tax

#	Enacted change	Details	Our comments
4.	CGT exemption on internal restructurings	• The Act has amended Paragraph 13 of the Income Tax Act's Eighth Schedule to introduce a provision that limits the CGT exemption on internal restructurings to only groups that have existed for at least 24 months. **Effective date 1 July 2023**	• This is intended to ensure that transactions specifically designed to avoid tax do not benefit from the group relief.
5.	Transfer of property within an SEZ to be exempt from CGT	• The Act has amended the Income Tax Act's First Schedule by introducing gains on transfer of property within a special economic zone enterprise, developer and operator among the incomes that are exempt from tax. • This amendment effectively means that CGT shall not apply on transfers within special economic zones. • **Effective date 1 July 2023**	• This amendment is aimed at encouraging investment in special economic zones.

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Personal Income Tax

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Personal Income Tax

We outline the key changes that affect personal tax below

#	Proposed change	Details	Our comments
1.	Standard mileage rate approved by AA of Kenya to be used to determine non-taxable travel allowances	• The Act has amended Section 5(2) of the Income Tax Act by inserting a new subsection 2(a)(iv). • The amendment limits the tax-free threshold in respect of travelling allowance for employees when out on official duties to the standard mileage rates provided by the Automobile Association of Kenya (AAK). • Previously an employee would be required to prove to the Commissioner that such an allowance was spent entirely on production of his employment income for the expenditure to be exempt from tax. **Effective date: 1 July 2023**	• The introduction of AAK mileage rates will provide uniformity and clarity on taxation of travel allowance. In practice, KRA has been accepting the use of the AA rates in determining the tax free or reimbursable mileage payments to employees travelling for business purposes.
2.	Club entrance and subscription fees now expressly taxable on the employee.	• The Act has amended section 5(2) by inserting paragraph (fa) to include club joining and subscription fees as a benefit taxable on the employee where the same has been allowed as a deduction on the employer. • The Act has further deleted Section 16(2)(a)(v) of the ITA which provided for disallowance of club entrance fees and subscription fees for corporation tax purposes. **Effective date: 1 July 2023**	• Taxation of club entrance and subscriptions fees has been a grey area in the ITA and over the last 2 years, KRA could potentially collect tax from both the employer and the employee. • This amendment is a welcome move as it provides clarity on who bears the tax and hence eliminating the incidence of double taxation.

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#	Proposed change	Details	Our comments
3.	Definition of Market value for the shares granted to employees	• The Act has amended the definition of "market value" in relation to a shares granted to an employee by directing that the market value is determined on the date of exercise of the option by the employee. • Currently, the market value for **listed shares** is determined on the date when the shares were **granted** by the employer whilst the market value for unlisted or partially listed shares is to be agreed upon with the Commissioner prior to grant date of the options. **Effective date: 1 July 2023**	• The Finance Act 2022 amended the Income Tax Act to move the tax point from end of vesting to the date of exercise for both registered and unregistered employee share option plans. • This is a welcome clean-up as it aligns the date of determination of the market value of the shares with the tax point which is now at exercise.
4.	Taxation of the benefit from shares allocated in lieu of cash to employees of start-ups to be deferred	• The Act has introduced a new subsection (numbered as 7) under Section 5 of the ITA covering taxation of the benefit from shares granted in lieu of cash to employees of **an eligible start up**. • The tax point for the benefit shall be deferred to **within thirty days** of the earlier of; a) 5 years after the year in which the award is granted to the employee; b) The date the employee disposes the shares; c) The date the employee ceases to be an employee of the eligible start up. • The market value of the shares will be determined at the earlier date of events outlined above and where the fair market value is not available, the Commissioner will determine it using the value of shares based on the last issued Financial Statements. • An eligible start up is defined as a business incorporated in Kenya that: a) Has an annual turnover of not more than KES 100 million; (b) does not carry on management, professional, or training business; (c) has not been formed as a result of splitting or restricting of an existing entity; and (d) has been in existence for not more than 5 years. **Effective date: 1 January 2024**	• This amendment aligns with the government's agenda on the bottom-up economic model and provision of a conducive business environment, and this is likely to promote the growth of Kenyan start-ups, while allowing them to remain tax compliant. • The government is also likely to reap more in future when the share price of such enterprises will be expected to have increased given at grant date, the shares may be of little value since the company is still growing and quite young. • In addition, this amendment will go a long way in addressing the challenge of attracting and retaining of competent staff which is prevalent among startups.

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Personal Income Tax

#	Proposed change	Details	Our comments
5.	Introduction of new tax bands	• The Act has introduced 2 new tax bands i.e., 32.5% and 35% for income between KES 500,000 and KES 800,000 and over KES 800,000 per month, respectively. Below is a table with the amended tax bands for individuals. (see table below) **Effective date: 1 July 2023**	• Considering the very low numbers of individuals earning more than KES 500,000 per month in Kenya, the negative effects of this amendment such as high earning individuals/employees taking up opportunities in other countries with lower tax rates or loss of informal jobs for low-income individuals ('hustlers') employed by these persons may outweigh the incremental revenue collection to be realized. • This may also lead to undesirable tax refunds where some employees may meet the 32.5% or 35% tax threshold due to one-off payments such as bonuses or commissions paid in some months but not meet the annual threshold for these rates when filing their annual tax returns.

Annual tax bands (KES)	Monthly tax bands (KES)	Tax rate
On the first 288,000	On the first 24,000	10%
On the next 100,000	On the next 8,333	25%
On the next 5,612,000	On the next 467,667	30%
On the next 3,600,000	On the next 300,000	32.5%
On all income above 9,600,000	On all income above 800,000	35%

Effective date: 1 July 2023

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Personal Income Tax

#	Proposed change	Details	Our comments
6.	Deductions in respect of the Affordable Housing Levy	• The Act has amended the Employment Act, 2007 by inserting Section 31B and 31C, to introduce a new monthly employee and employer levy known as Affordable Housing Levy. • Employees are required to contribute 1.5% of their gross monthly salary, with the employer matching the contribution. • There is no cap on the contributions. • The employer has the obligation to remit the employee and employer levy payments not later than nine working days after the end of the month in which the payments are due. • The penalty for non-compliance to the employer is 2% of the unpaid funds every month the levy payment remain unpaid. **Effective date: 1 July 2023**	• Whereas the government's agenda of provision of social and affordable housing may be noble, this deduction will increase the burden on employees and employers who are already grappling with the high cost of living, increased taxes and other statutory deductions like NSSF and NHIF. • In addition, the levy will increase the cost of labour, and this may lead to loss of jobs given employers are eager to minimize their costs in the current tough economic environment and this is likely to worsen the already dire unemployment situation in Kenya.
7.	Post – Retirement Medical fund relief introduced	• The Act has introduced a new section 31A in the Income Tax Act which provides for a post-retirement medical fund relief to resident individuals who prove that they have contributed to a post-retirement medical fund. • The Act further amends the Third Schedule by introducing paragraph 4 which sets the amount of relief for contributions made to a post-retirement medical fund at **15% of the amount of contribution paid** or **KES 60,000 per annum** whichever is lower.	• The amendment is a welcome move since retirees will also benefit from this tax relief where conditions are met. • In addition, this aligns with other government initiatives to protect its senior citizens and increasing the uptake of this medical fund considering it is close to 5 years since it was operationalized.

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#	Proposed change	Details	Our comments
7.		• A Post – Retirement Medical Fund is defined in the **Retirement Benefits (Post retirement Medical Funds) Guidelines of 2018** as " a fund established within a scheme to which contributions are made and from which the costs of medical benefits can be met as shall be determined in accordance with the medical fund rules. **Effective date: 1 January 2024**	• However, the government may need to consider a tax exemption on the lumpsum payments commuted directly to a post-retirement medical fund as this would provide more relief and better uptake of this product.
8.	Mortgage refinance companies now qualifying financial institutions	• The Act has amended the Fourth Schedule by adding Mortgage Refinance Companies licensed under the Central Bank of Kenya Act to the list of Financial Institutions. • The Act has also amended section 15(3)(b) by deleting the word "five" and substituting it with "six". This effectively makes mortgage refinance companies part of the financial institutions from which individuals can take mortgage loans and qualify for the monthly mortgage interest deduction. **Effective date: 1 January 2024**	• This is welcome as it expands the list of institutions individuals can obtain mortgage loans and enjoy the owner occupier mortgage interest deduction. • The amendment is also in line with the establishment of Kenya Mortgage Refinance Company which is expected to drive the affordable housing agenda.

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#	Proposed change	Details	Our comments
9	Inclusion of a gender-neutral provision with respect to life insurance relief	• The Act has amended Section 31(1)(a) of the Income Tax Act by deleting the words, "he has paid a premium for an insurance made by him on his life or the life of his wife or of his child" and substituting the words thereof with "the individual has paid a premium for an insurance made by the individual on the individual's life or the life of the individual's spouse or child". **Effective date: 1 July 2023**	• This amendment is aimed at providing a more gender – neutral provision that allows all taxpayers to claim insurance relief.

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VAT

We outline the key VAT changes below

#	Enacted change	Details	Our comments
1.	VAT on petroleum products increased from 8% to 16% and VAT on liquefied petroleum gas (LPG) reduced from 8% to 0%	- The Act has deleted Sections 5 (2)(aa) and (2)(ab) that apply VAT at 8% on goods listed in Section B of Part I of the First Schedule to the VAT Act (petroleum products) and LPG, including propane. The Act has also introduced LPG in Paragraph 27 to Part A of the Second Schedule of the VAT Act. - In effect, petroleum products will henceforth be subject to VAT at 16%, while LPG will be zero-rated. **Effective date: 1 July 2023**	• The removal of the applicable rate of 8% on petroleum products that are listed under Section B of Part I of the First Schedule of the VAT Act renders the products subject to VAT at 16%. • This amendment will significantly increase the cost of fuel which is an integral commodity in the Kenyan economy. Consequently, the higher cost is likely to result in higher prices of goods in the Kenyan economy and may have an undesirable impact the cost of living. • On the other hand, the introduction of LPG under the zero-rated schedule will reduce the cost of cooking gas for Kenyan households and discourage the use of alternatives that may not be environmentally friendly. This also means that entities providing LPG will now be eligible to claim any input tax relating to these business.

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#	Enacted change	Details	Our comments
2	Zero-rating of exportation of taxable services	• The Act introduces the exportation of taxable services under paragraph 23 of Part A of the Second Schedule (zero-rating schedule) to the VAT Act. • This amendment deletes and replaces the exportation of taxable services in relation to Business Process Outsourcing (BPO) services under the zero-rating schedule of the VAT Act. **Effective date: 1 July 2023**	• The Finance Act 2022 deleted the ***exportation of taxable services*** from the First Schedule of the VAT Act thus removing its exempt VAT status and making it taxable at the standard rate of 16%. It also introduced exportation of taxable services in relation to BPO under the zero-rating schedule. • The Act has now made changes to revert the treatment of exported taxable services as a taxable supply at a zero percent rate. • This change aligns with international best practice. It also incentivises investment into Kenya and establishment of shared service centres. Ultimately, we expect that the zero-rating of exported taxable services will attract global entities to set up in the country.

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VAT

#	Enacted change	Details	Our comments
3	Deductibility of input tax under Section 17	• The Act has amended the VAT Act to make the conditions applicable for claiming of input tax under Section 17(2) mutually inclusive. • The Act further amends Section 17 of the VAT Act by introducing a new subsection 9 on the taxability of compensation for the loss of taxable supplies. The amendment states that where one is compensated for the loss of taxable supplies, the compensation shall be treated as a taxable supply and— a) if the compensation includes value added tax, the compensation shall be declared and the value added tax thereon remitted to the Commissioner; or b) if the compensation does not include value added tax, the compensation shall be declared and subjected to value added tax and the tax remitted to the Commissioner. **Effective date: 1 July 2023**	• The amendment to Section 17(2) requires VAT registered persons to ensure that they have proper documentation (mainly the tax invoice) and that the sale is declared in the supplier's VAT return prior to deducting input tax. • Initially, these two conditions may have been considered mutually exclusive. It follows that deduction of input tax will henceforth depend not only on one possessing the requisite documents but also ensuring suppliers/vendors have declared corresponding output tax on the supply. We opine that unless the Kenya Revenue Authority (KRA) is able to provide a status on output tax declarations, this requirement is likely to become onerous to taxpayers. Perhaps the use of the new Tax Invoice Management System (TIMS) may come in handy in this respect. • The amendment to Section 17(9) seeks to introduce a mechanism for recovery of VAT on taxable supplies where input tax may have been deducted without corresponding output tax being levied due to loss.

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#	Enacted change	Details	Our comments
4.	Clarification on the applicability of place of supply rules for services provided by non-residents.	• The Act has amended Section 8 (2) by deleting the words “not a registered person” and replacing it with the words “a registered or unregistered person”. **Effective date: 1 July 2023**	• Section 8(2) of the VAT Act is part of the provisions that prescribe the place of supply rules for VAT in Kenya. It is a deeming provision that considers certain supplies provided by non-resident persons to fall within the scope of VAT. • The provision initially only considered supplies made by non-residents to non-registered persons as falling within scope. However, the Finance Act, 2023 widens the scope to include qualifying services when rendered to VAT registered recipients.
5.	The time of supply of goods and services for a national carrier.	• The Act has amended Section 12 of the VAT Act by inserting sub-section 1(A) immediately after sub-section 1 that provides: "subject to sub-section 1, in the case of a national carrier, the time of supply shall be the date on which the goods are delivered or services performed." **Effective date: 1 July 2023**	• The amendment distinguishes the time of supply rules for national carrier from the generally applicable time of supply rules. It is an exception to the general rule that prescribes the time of supply to be the earlier of time of supply (delivery of goods or provision of services), time of payment or date of invoice. • Henceforth, national carriers such as Kenya Airways will therefore account for VAT upon delivery of goods or delivery of services.

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#	Enacted change	Details	Our comments
6.	New requirements on the refund of tax paid on bad debts	• The new sub-section (1) of Section 31 of the VAT Act prescribes new requirements for VAT refunds occasioned by bad debts. The statutory timelines within which one may apply for such refunds remain three years from the time of supply or where a defaulting customer has been placed under statutory management through the appointment of an administrator, receiver or liquidator the time of institution of such statutory management procedures. • However, the amendment extends the window within which one may claim a refund in this regard from one year (initially provided that one must claim refund before the end of the fourth year) to seven years (now one can claim a refund within ten years from the time of supply). • The amendment also require that: – A refund claim ought to be made in compliance with Section 47(5) of the Tax Procedures Act, – The refundable amount may be availed by way of credit to offset against future VAT liabilities, – Should the refunded amount be recovered from the customer, such amount should be paid back to the Commissioner within 60 days of such recovery failing which interest accrues at the rate of 2% per month or part thereof on the amount outstanding subject to the *in duplum* rule.	• The change is a welcome move as it gives registered persons ten years from the date of supply to lodge an application for refund of VAT on bad debts. • However, the changes made to Section 31 require some clean up as they are repetitive and contain some typos.

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#	Enacted change	Details	Our comments
7.	Keeping of VAT records in Kenya	• The Act has amended Section 43(1) of the VAT Act by removing the requirement to keep VAT records in Kenya. **Effective date: 1 July 2023**	• This amendment allows taxpayers to store their VAT records, whether in electronic form or otherwise, at any place of their choice for the 5 years limit under Section 43(1).
8.	Exclusion of non-resident suppliers of digital marketplace supplies from the VAT registration threshold	• The Act has amended the proviso under Section 34 (1) of the VAT Act to provide that the VAT registration threshold shall not apply to non-resident persons making supplies of digital services over the internet, an electronic network or a digital marketplace. **Effective date: 1 July 2023**	• The amendment reiterates the exclusion of persons supplying imported digital marketplace supplies from the VAT registration threshold requirements. It offers much needed clarity on the current proviso which has received varying interpretations.

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#	Enacted change	Details	Our comments
9.	Correction of the description under Paragraph 20 of Part I of the First Schedule	• New Paragraph 20 covers: Fish and crustaceans, molluscs and other aquatic invertebrates of Chapter 3 excluding those of tariff headings 0305, 0306 and 0307. **Effective date: 1 July 2023**	• The amendment is intended to provide clarity on description of items of Chapter 3 of the East African Community Common External Tariff (EAC CET) that are exempt under Paragraph 20.
10	Harmonisation of tariff codes/description to match those in the East African Community Common External Tariff (EAC CET)	• The Act has inserted the following tariff numbers: 3003.41, 3003.42, 3003.43, 3003.49, 3003.90, 3005.90, and their corresponding tariff descriptions, in proper sequence, into the table appearing immediately after paragraph 39. • The Act has done a clean-up of the tariff numbers and/or the corresponding descriptions as below: of tariff 3002.11.00, 3002.20.00, 3002.30.00, 3003.39.00, 3004.20.00, 3004.32.00, 3006.20.00, 3006.60.00 and 9021.50.00 in the table after paragraph 39. • The Act did a further clean-up of the tariff numbers and/or the corresponding descriptions of items falling under 0402.29.10, 3002.19.00, 3005.90.10, 3004.90.90 and 3003.90.10. **Effective date: 1 July 2023**	• The amendments aim at cleaning up the tariff numbers and corresponding descriptions to match with the current EAC CET.

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#	Enacted change	Details	Our comments
11	Changes to Part I of the First Schedule	• The Act has reintroduced Paragraph 63 to the VAT Act's First Schedule. Paragraph 63 exempts 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. **Effective date: 1 July 2023**	• The amendment reinstates the exemption of construction material for specialized hospitals which was deleted vide the Finance Act of 2022. It is intended to align with addressing the cost of healthcare.
		• The Act has deleted Paragraph 49, which exempts aircraft parts of heading 8803, excluding parts of goods of heading 8801, and replaced it with one that exempts all goods and parts thereof of chapter 88. **Effective date: 1 July 2023**	• The exemption will cover parts of balloons and dirigibles; gliders, hang gliders and other nonpowered aircraft under 8801 which were previously excluded. It will also cover helicopters/aircrafts of tariff numbers 8802.11.00, 8802.12.00 and 8802.20.00 which had been deleted from the exemption schedule vide the Finance Act 2020.

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#	Enacted change	Details	Our comments
12	Changes to Part I of the First Schedule	• The Act has deleted Paragraph 66A from the VAT Act's First Schedule. The paragraph exempts Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel). • The Act has now introduced Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel) under the zero-rating schedule (Second Schedule). **Effective date: 1 July 2023**	• This deletion led to the introduction of BEV stoves under the Second Schedule. The move to zero-rate Bio-ethanol stoves will, expectedly, make them more affordable and will align with environmental protection goals.
		• The Act had deleted Paragraph 71, which exempts Perforated PE film 15-22 gsm of tariff number 3921.90.00 and replaced it with a New Paragraph 71, which exempts Printed and unprinted Perforated PE film of other plastics 15-22 gsm of tariff numbers 3921.90.10, and 3921.90.90. **Effective date: 1 July 2023**	• This measure will result in the clarification of the printed items covered under paragraph 71.
		• The Act has deleted Paragraph 108 from the VAT Act's First Schedule. The paragraph exempts the supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight. **Effective date: 1 July 2023**	• This change is a clean-up of the VAT Act while retaining the zero-rating of maize flour under Paragraph 22 of the Second Schedule of the VAT Act.

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#	Enacted change	Details	Our comments
13	Changes to Part I of the First Schedule	• The Act had deleted Paragraph 119 of the VAT Act's First Schedule and replaced it with a new Paragraph 119. The paragraph initially exempted 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. • The New Paragraph 119 exempts 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. **Effective date: 1 July 2023**	• This measure will result in the clarification of the diagnostic kits items covered under paragraph 119. It is also a clean-up measure to align with the current EAC CET tariff numbering.
		• The Act had deleted Paragraph 120 of the VAT Act's First Schedule and replaced it with a new Paragraph 120. Paragraph 120 initially exempted 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. • The New Paragraph 120 exempts 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. **Effective date: 1 July 2023**	• This measure will result in the clarification of the electro-diagnostic apparatus items covered under paragraph 120.

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#	Enacted change	Details	Our comments
14	Changes to Part I of the First Schedule	• The Act had deleted Paragraph 122 of the VAT Act's First Schedule and replaced it with a new Paragraph 122. Paragraph 122 initially exempted 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. • The New Paragraph 122 now exempts 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. **Effective date: 1 July 2023**	• This measure will result in the clarification of the instruments and appliances covered under paragraph 122.
		• The Act had deleted Paragraph 125 of the VAT Act's First Schedule and replaced it with a new Paragraph 125. Paragraph 125 initially exempted artificial teeth and dental fittings of tariff numbers 9021.21.00, 9021.29.00 and artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health. • The New Paragraph 125 now exempts artificial teeth of tariff number 9021.21.00, other dental fittings of tariff number 9021.29.00 and other artificial parts of the body of tariff numbers 9021.31.00 and 9021.39.00 and other appliances of tariff number 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health. **Effective date: 1 July 2023**	• This measure will result in the clarification of the Artificial teeth, other dental fittings and other artificial parts of the body covered under paragraph 125. It also cleans up the Paragraph by proposing to delete tariff number 9021.50.00 which already enjoys exemption under the table immediately below Paragraph 39.

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#	Enacted change	Details	Our comments
15	Changes to Part I of the First Schedule	• The Act had deleted Paragraph 128 of the VAT Act’s First Schedule and replaced it with a new Paragraph 128. Paragraph 128 initially exempted discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, of tariff number 8523.80.10, including matrices and masters for the production of discs, but excluding products of Chapter 37; software upon approval by the Cabinet Secretary responsible for matters relating to health. • The New Paragraph 128 now exempts discs, tapes, solid-state non-volatile storage devices, “smartcards” and other media for the recording of sound or of other phenomena, whether or not recorded of tariff heading 85.23, including matrices and masters for the production of discs, but excluding products of Chapter 37 upon approval by the Cabinet Secretary responsible for matters relating to health. **Effective date: 1 July 2023**	• This measure will result in the clarification of the storage devices covered under paragraph 128. It expands the scope of exemption to items under tariff heading 8523 compared to the initial Paragraph which only covered tariff number 8523.80.10.
		• The Act had deleted Paragraph 129 of the VAT Act’s First Schedule and replaced it with a new Paragraph 129. Paragraph 129 initially exempted weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.31.00, including weight operated counting or checking machines; weighing machine weights of all kinds upon approval by the Cabinet Secretary responsible for matters relating to health. • The New Paragraph 129 now exempts weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.10.00 purchased or imported by registered hospitals upon approval by the Cabinet Secretary responsible for matters relating to health. **Effective date: 1 July 2023**	• This measure will result in the clarification of the weighing machinery covered under paragraph 129. It limits the exemption to the purchase or importation by registered hospitals.

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#	Enacted change	Details	Our comments
16	Changes to Part I of the First Schedule	• The Act has deleted Paragraph 130 from the VAT Act's First Schedule. The paragraph exempted fetal Doppler-Pocket (Wgd-002) Pc and pulse oximeter-finger held (Gima brand) Pc of tariff number 9018.19.00 upon approval by the Cabinet Secretary responsible for matters relating to health. The Act deletes this Paragraph. **Effective date: 1 July 2023**	• This measure is aimed at cleaning up the exemption schedule as electro-diagnostic apparatus of tariff number 9018.19.00 are also exempted from VAT under Paragraph 120.
		• Paragraph 140 exempts plant and machinery of chapter 84 and 85 imported by manufacturers of pharmaceutical products or investors in the manufacture of pharmaceutical products upon the recommendation by the Cabinet Secretary responsible for matters relating health. • The Act amends Paragraph 140 to include plant and machinery purchased locally. **Effective date: 1 July 2023**	• This change will encourage investors or manufacturers of pharmaceutical products to purchase relevant plant and machinery locally.

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#	Enacted change	Details	Our comments
17	Changes to Part I of the First Schedule	• Paragraph 145(b) of the First Schedule exempts taxable goods, inputs and raw materials imported or locally purchased by a company which is incorporated for purposes of undertaking the manufacture of human vaccines and whose capital investment is at least ten billion shillings, subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health. • The Act amends the paragraph by inserting the words *"or other manufacturing activities including refining"* immediately after the words *"human vaccines“* **Effective date: 1 July 2023**	• This change will encourage investors or manufacturers to purchase goods, input and raw materials to invest not only in the pharmaceuticals sector but also other manufacturing activities including refining. • It will also increase purchase of locally produced inputs further promoting growth in the economy.
		• The Act has introduced Paragraph 147 to the VAT Act’s First Schedule. The paragraph exempts taxable supplies made to or by a school feeding programme recognized by the Cabinet Secretary responsible for matters relating to education. **Effective date: 1 July 2023**	• This change is welcome, as this will reduce the cost of food provision for school feeding programmes which will support the Government's agenda of ensuring food security.

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#	Enacted change	Details	Our comments
18	Changes to Part II of the First Schedule	• Paragraph 34 exempts taxable goods, inputs and raw materials imported or locally purchased by a company which— i. is engaged in business under a special operating framework arrangement with the Government; and ii. is incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least ten billion shillings. • The Act amends Paragraph 34 by deleting the words "*goods, inputs and raw materials*" and replacing it with *"services"*. The Act also amends Paragraph 34 (b) by inserting the words *"or other manufacturing activities including refining"* immediately after the words "human vaccines". **Effective date: 1 July 2023**	• The change is aimed at cleaning up the exemption schedule by replacing "*goods, inputs and raw materials*" with *"services"*. Part II of the First Schedule covers exempt services. • This change also expands the scope of activities that may enjoy the exemption to include other manufacturing activities including refining and aligns Paragraph 145 under Part I of the First Schedule.

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#	Enacted change	Details	Our comments
19	Changes to Part A of the Second Schedule	• The Act deletes Paragraph 20 that zero-rates the supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight. Paragraph 20 was operational for six months from the date of assent. **Effective date: 1 July 2023**	• This change is a clean-up of the VAT Act while retaining the zero-rating of the flour under Paragraph 22 of the Second Schedule of the VAT Act.
		• Introduction of Paragraph 26 covering inbound international sea freight offered by a registered person. **Effective date: 1 July 2023**	• This change comes following various debates on the taxability of freight services relating to imported goods under Section 14 of the VAT Act. • This amendment ensures that where the supplier of international sea freight is a registered person they will accord zero-rate to their services. Where the international freight is supplied by a non-resident person the -freight value is included in computing the customs value of the imported goods.

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#	Enacted change	Details	Our comments
20	Changes to part A of the Second Schedule	• Introduction of Paragraph 28 which zero-rates all tea and coffee locally purchased for the purpose of value addition before exportation subject to approval by the Commissioner-General. **Effective date: 1 July 2023**	• This change is informed by the Government's push for the tea and coffee industry to add value to the tea and coffee harvested in Kenya prior to exportation. Expectedly, this will result in such products fetching higher prices thus increasing earnings upon their exportation. • This will expectedly also contribute to a reduction in the trade deficit and contribute to the stabilization of foreign exchange.
		• Introduction of Paragraph 29 covering the supply of locally assembled and manufactured mobile phones. **Effective date: 1 July 2023**	• This change will encourage the investors or manufacturers to invest in this sector. It will also increase purchase of locally assembled and manufactured mobile phones further promoting growth in the economy.

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Enacted

VAT

#	Enacted change	Details	Our comments
21	Changes to part A of the Second Schedule	• Introduction of Paragraph 30 covering the supply of motorcycles of tariff heading 8711.60.00. **Effective date: 1 July 2023**	• This change will encourage investors or manufacturers to invest in this sector. • This move will also make acquisition of electric motorcycles more affordable and therefore provide more job opportunities for the youth in the transport sector. It is also a move geared towards curbing carbon emission.
		• Introduction of Paragraph 31 covering the supply of electric bicycles. **Effective date: 1 July 2023**	• This new change is a welcome move as it supports the green energy movement. It is also a move geared towards curbing carbon emission.

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Enacted

VAT

#	Enacted change	Details	Our comments
22	Changes to part A of the Second Schedule	• Introduction of Paragraph 32 that zero-rates the supply of solar and lithium-ion batteries . **Effective date: 1 July 2023**	• This change will encourage investors or manufacturers to invest in this sector.
		• Introduction of Paragraph 33 that zero-rates the supply of electric buses of tariff heading 87.02. **Effective date: 1 July 2023**	• This change will encourage the investors or manufacturers to invest in this sector. It is also a move geared towards curbing carbon emission.

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#	Enacted change	Details	Our comments
23	Changes to part A of the Second Schedule	• Introduction of Paragraph 34 to zero-rate inputs and raw materials locally purchased or imported for the manufacture of animal feeds. **Effective date: 1 July 2023**	• This change will encourage investors or manufacturers to invest in this sector. Businesses will be eligible to claim VAT incurred on taxable supplies that such businesses acquire for production purposes. • However, there is need for a clean-up of the law as Paragraph 43 of Part I of the First Schedule exempts materials, waste, residues and by-products, whether or not in the form of pellets, and preparations of a kind used in animal feeding. The existence of these two Paragraphs seemingly providing different VAT treatment to items that may be considered the same may cause confusion.
		• Introduction of Paragraph 35 that zero-rates Bioethanol vapour (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel). **Effective date: 1 July 2023**	• BEV stoves are mainly used in the hospitality sector, specifically in catering services. • We expect the change to effectively reduce the cost of the cooking appliances and plate warmers. This also promotes the use of bioethanol vapour which is a bio-renewable source of fuel.

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Excise Duty

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Excise Duty

We outline the key Excise Duty changes below.

#	Enacted change	Details	Our comments
1.	Clarification on the definition of excise control	• The Act has amended Section 2 of the Excise Duty Act, 2015 (EDA) to read as follows: *"excise control" has the meaning assigned to it in section 24"* **Effective date: 1 July 2023**	• Previously, Section 2 of the EDA defined excise control as per Section 23 of EDA which provides for notification of licensees on suspension of a license by the Commissioner. Section 24 of the EDA on the other hand covers excisable goods under excise control. • The measure is aimed at correcting a drafting error in the definition of excise control under Section 2 of the EDA to refer to the appropriate provision in the EDA in relation to excise control.
2	Suspension of excise duty license	• The Act has amended Section 20(5)(b) of the EDA to require the Commissioner to allow a licensee who has appealed suspension of a license a minimum period of 14 days to remedy the deficiencies that led to the suspension of the license. **Effective date: 1 July 2023**	• This is a welcome move that will ensure certainty and fairness amongst licensees who appeal suspension of a license by the Commissioner.

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Excise Duty

#	Enacted change	Details	Our comments
3	Repeal of inflationary adjustment of excise duty rates.	• The Act has repealed Section 10 of the EDA which provided for annual inflationary adjustment of specific rates of excise duty. **Effective date: 1 July 2023**	• Previously, Section 10 of the EDA empowered the Commissioner General of the Kenya Revenue Authority (CG) upon approval by the Cabinet Secretary for the National Treasury and Planning (CS) to adjust specific rates of excise duty by taking into account the average inflation of the preceding financial year. • The CG has been increasing excise duty on all products attracting specific rates by the average inflation (ranging between 5.2% and 6.3%) annually since August 2018. • The annual increase of excise duty on excisable goods has resulted in an increase in the price of excisable goods which has suppressed the demand for these products and encouraged consumption of illicit and counterfeit goods in the market. • This measure is therefore a welcome move that will protect affected local manufacturers, importers and consumers from negative economic impacts associated with annual increase in the costs of the excisable products. • It is however noteworthy that the CS is still empowered under Section 8 of the EDA to increase excise duty on excisable goods. We therefore hope that this provision will not be used in an arbitrary manner that does not take into account the negative effects of imposing high excise rates that necessitated the repeal of the inflationary adjustment provision.

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Excise Duty

#	Enacted change	Details	Our comments
4.	Excise stamps offenses	• The Act has repealed Section 40 of the EDA which provided that contravention of Section 28 of the EDA on excise stamps is an offense. • In its place, the Act has amended Section 28 of the EDA to specify various offenses in relation to excise stamps as follows: *A person who—* *a) defaces or prints over an excise stamp affixed on any excisable goods or package;* *b) knowingly is in possession of excisable goods on which excise stamps have not been affixed and which have not been exempted from the requirements of this Act or Regulations made under this Act;* *c) acquires or attempts to acquire an excise stamp without the authority of the Commissioner;* *d) prints, counterfeits, makes or in any way creates an excise stamp without the authority of the Commissioner;* *e) knowingly is in possession of an excise stamp which has been printed, made or in any way acquired without the authority of the Commissioner;* *f) knowingly is in possession of, conveys, distributes, sells, offers for sale or trades in excisable goods without affixing excise stamps in accordance with this Act or Regulations made under this Act; or* *g) is in possession of, conveys, distributes, sells, or trades in excisable goods which have been affixed with counterfeit excise stamps,* *commits an offence.* • Further, the Act has introduced a fine not exceeding KES 5 million or imprisonment for a term not exceeding 3 years, or to both on persons who are convicted of the foregoing offences. **Effective date: 1 July 2023**	• Previously, Section 28 of the EDA required the CS to publish regulations to govern affixation of excise stamps on excisable goods and prohibited removal of excisable goods from a place designated for affixation of excise stamps if the goods had not been affixed with stamps. • The amendment seeks to specify various acts or omissions that amount to an offense and will provide the much-needed clarity. • Stamps are affixed on excisable goods as an enforcement measure to enable the KRA monitor compliance of excisable goods in the market and seal revenue leakages. • In our view, the amendment is aimed at enforcing compliance by local manufacturers and importers of excisable goods with the excise duty laws and regulations.

Introduction | Corporate tax | Withholding Tax | Digital Asset Tax | Capital Gains Tax | Personal Income Tax | Value Added Tax
Excise duty | Miscellaneous fees & levies | Tax administration | Other measures

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Excise Duty

#	Enacted change	Details	Our Comments
5	Payment of excise duty on alcoholic beverages within 24 hours upon removal of the goods from the stockroom	• The Act has introduced a requirement for licensed manufacturers of alcoholic beverages to remit excise duty to the Commissioner within 24 hours upon removal of the goods from the stockroom. **Effective date: 1 July 2023**	• The EDA previously required local manufacturers of excitable goods including alcoholic beverages to remit excise duty payable before the 20th day of the preceding month. The determination of excise duty payable on excisable goods involves making adjustments for relief of excise duty paid on excisable raw materials, goods damaged while under excise control etc. Further, in practice local manufacturers usually for excise duty on exported goods and claim for rebate of the paid excise duty when the requisite export supporting documents are available. The determination of excise duty payable is therefore very tasking and requires adequate time to ensure accurate computation of the excise duty payable. • To this end, local manufactures of alcoholic beverages will need to boost their resources to facilitate payment of excise duty within 24 hours. • In addition, most manufacturers are not paid on the day of delivery of purchased goods. The requirement to remit excise duty on alcoholic beverages within 24 hrs will mean that most local manufactures will remit excise duty that has not been collected from the consumers. In our view, this change may lead to revision of payment terms by local manufactures to require immediate payment for supplied goods. In our view, this measure will negatively impact the cash flow of local manufacturers and distributors of alcoholic beverages and may ultimately lead to the increase in the cost of alcoholic beverages. • As the Government seeks to boost revenue collection, it must take precaution not to impose additional administrative burden that will negatively impact profitability of the affected businesses.

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Excise Duty

#	Enacted change	Details	Our Comments
6	Payment of excise duty on betting and gaming within 24 hours	• The Act has introduced a requirement for bookmakers to remit excise duty on betting and gaming offered through a platform or other medium to the Commissioner within 24 hours from the closure of transactions of the day under Section 36A of EDA. • The Act clarifies that "closure of transactions of the day" means midnight of that day. • Further, the Act has empowered the CG to require taxpayers in any sector to remit excise duty collected on certain excisable services within 24 hours from the closure of transactions of the day. **Effective date: 1 July 2023**	• The betting industry in Kenya has grown tremendously in the recent past due to increased popularity particularly amongst the youth. • The Government has taken various tax measures including introduction of excise duty and withholding tax on betting and gaming in a bid to discourage the vice which has had negative social impacts amongst the youth. • Betting and gaming activities in Kenya are largely transacted through digital platforms. Last year, the Government required betting companies to remit taxes collected on gaming activities on a daily basis perhaps in a bid to improve Government cashflow. Proposals by stakeholders to delete this proposal during public participation were rejected on the basis that remittance of excise duty by betting companies within 24hrs had been tested and was working effectively. • In our view, the amendment is aimed at promoting tax compliance in the betting industry and improving Government's cashflow. • However, the measure will impose an administrative burden on bookmakers and will potentially increase the cost of excise duty compliance for betting companies. This will also be the case for other taxpayers who provide excisable services if the CG requires them to remit excise duty within 24 hours from the closure of transactions of the day.

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Excise Duty

#	Enacted change	Details	Our comments
7	Introduction of excise duty on various goods and services	• The Act has introduced excise duty on the following goods and services: a) Imported fish at 10% b) Powdered juice at KES 25 per kg c) Imported sugar excluding imported sugar purchased by a registered pharmaceutical manufacturer at KES 5 per kg d) Imported cement at 10% of the value or KES 1.50 per kg, whichever is higher e) Imported furniture of tariff heading 9403 excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin at 30% f) Imported paints, varnishes and lacquers of tariff heading 3208, 3209 and 3210 at 15% g) Imported non- virgin test liner of tariff code 4805.24.00 at 25% h) Imported non-virgin fluting medium of tariff code 4805.19.00 at 25% i) 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 codes 4819.10.00, 4819.20.10 and 4819.20.90 at 25% j) Imported plates of plastic of tariff code 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 at 25% k) Imported paper or paper board, labels of all kinds whether or not printed of tariff code 4821.10.00 and 4821.90.00 at 25% l) Fees charged on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions at 15% **Effective date: 1 July 2023**	• The Act has introduced excise duty on certain imported goods e.g., fish, sugar, cement, paints, varnishes, lacquers, non-virgin test liners and fluting mediums to increase the costs of importing these goods in a bid to cushion local manufactures of these goods from competition arising from cheaper imports. In our view, this measure will encourage investment in the affected industries, promote employment and ultimately economic growth. • However, in the short term, this measure, will increase the prices of these goods in the market which may suppress-demand. Ultimately, this will negatively impact the welfare of the local *mwanachi* and potentially reduce government revenue. • The Act has also reintroduced excise duty on imported furniture, having deleted this provision on 1 July 2022. However, furniture imported from the EAC will be exempted from excise duty in line with the EAC policy on national treatment. • The Act has also introduced excise duty on fees charged on advertisements in a bid to limit the volume of these advertisements and consequently regulate the consumption of alcohol and discourage betting amongst the youth.

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Excise Duty

#	Enacted change	Details	Our comments
8	Reduction of excise duty on various services	• The Act has amended Part II of the First Schedule to the EDA by reducing excise duty on the following services: a) Telephone and internet data services from 20% to 15% b) Fees charged for money transfer services by banks, money transfer agencies and other financial service providers from 20% to 15% **Effective date: 1 July 2023**	• This measure is aimed at reducing the cost of telephone and internet data services and money transfer services by financial institutions and money transfer agencies in a bid to increase affordability and promote accessibility to these services. • According to the CS, the change will align excise duty on money transfer services by banks, money transfer agencies and telcos. • The EDA defines money transfer services to include sending or withdrawal of money. The reduced rate will, in our view, apply on fees charged for sending money through RTGS, Electronic Funds Transfer (EFT), Telegraphic Transfer (TT) and Pesalink and withdrawal of money from a bank account in any form including through ATM machines, over the counter withdrawal, withdrawal through cheques etc.

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Excise Duty

#	Enacted change	Details	Our comments
9	Increase of excise duty rates on various goods and services	• The Act has amended Part II of the First Schedule to the Excise Duty Act by increasing the excise duty on various goods and services as follows: a) Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products) from 25% to 35% b) Imported Alkyd from 10% to 20% c) Imported Unsaturated polyester from 10% to 20% d) Imported Emulsion VAM from 10% to 20% e) Imported Emulsion - styrene Acrylic from 10% to 20% f) Imported Homopolymers from 10% to 20% g) Imported Emulsion B.A.M. from 10% to 20% h) Fees charged for money transfer services by cellular phone service providers, or payment service providers licensed under the National Payment System Act, 2011 from 12% to 15% i) Betting (excluding horse racing), gaming, price competition and lottery (excluding charitable lotteries) from 7.5% to 12.5%. **Effective date: 1 July 2023**	• This amendment is primarily geared towards generating additional revenue for the Government. • The Act has also increased excise duty on certain imported goods e.g. glass bottles, alkyd, unsaturated polyester, certain emulsions and homopolymers to increase the costs of importing these goods in a bid to cushion local manufactures of these goods from competition arising from cheaper imports. In our view, this measure will encourage investment in the affected industries, promote employment and ultimately economic growth. • The Act has increased the rate of excise duty on betting (excluding horse racing), gaming, price competition and lottery (excluding charitable lotteries) to 12.5% to further discourage the vice and generate additional revenue for the Government. The Government had initially proposed to increase the rate to 15% but this was reduced to 12.5% on the basis that the proposed increment was too steep and would adversely hurt the betting industry.

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Excise Duty

#	Enacted change	Details	Our comments
10	Removal of excise duty on certain goods	• The Act has removed excise duty on the following products: a) Condensates of Tariff Code 2709.00.10. b) Locally manufactured articles of plastic of Tariff Code 3923.30.00 and 3923.0.90. c) Electric motorcycles at KES 12,185.16 per unit **Effective date: 1 July 2023**	• The Government introduced excise duty on locally manufactured and imported plastics of Tariff Code 3923.30.00 and 3923.90.90 at 10% through the Finance Act 2021 and Finance Act 2022. This measure increased the cost of plastic packaging materials such as carboys, bottles, flasks and similar articles including packaging materials used by local manufacturers in Kenya which goes against the Government policy of promoting industrialisation. • This measure will reduce the cost of manufacturing the affected plastic articles and protect local manufactures from competition arising from cheaper plastic articles.
11	Amendment of excise duty on chocolate	• The Act has amended Part I of First Schedule to the EDA by deleting *""Imported white chocolate including chocolate in blocks, slabs or bars of tariff nos. 1806.31.00, 1806.32.00, and 1806.90.00"* and replacing with *"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"* **Effective date: 1 July 2023**	• Previously, the First Schedule of the EDA was not clear on the scope of white chocolate that is subject to excise duty and could be interpreted to mean that only white chocolate containing cocoa of Tariff Heading 1806 was subject to excise duty. • The amendment seeks to clarify that white chocolate of Tariff Heading 1704 is subject to excise duty. • In addition, other food preparations containing cocoa will now be subject to excise duty. Previously, only chocolates in blocks, slabs or bars were subject to excise duty

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Enacted

Excise Duty

#	Enacted change	Details	Our comments
12	Clarification on the definition of the amount wagered or staked	• The Act has amended the definition of the "amount wagered or staked" under Part III of the First Schedule of the EDA by inserting the words "or gaming" immediately after the word "betting" therefore the definition will read as follows: *"means the amount of money placed by a person for an outcome in a betting or gaming transaction"* **Effective date: 1 July 2023**	• The measure is aimed at providing clarity on the taxable value in a gaming transaction.
13	Amendment of the exemption schedule	• The Act has amended the excise duty exemption schedule to include disassembled or unassembled kits for local assembly or manufacture of mobile phones from excise duty. **Effective date: 1 July 2023**	• This is a welcome move that is aimed at promoting the local assembly and manufacture of mobile phones.

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Dropped

Excise Duty

The following proposals contained in the Finance Bill, 2023 were omitted in the Finance Act

#	Proposal	Details
1.	Amendment of excisable fees charged by digital lenders	• Proposal to amend Part II, Paragraph 7 of the First Schedule of the EDA to charge excise duty on any amount charged in respect of lending. In our view, excise duty will still be applicable any amounts charged by digital lenders with respect to digital loans
2	Introduction of excise duty on various goods	• Proposal to introduce excise duty on the following goods was dropped: - Locally manufactured sugar confectionary of Tariff Heading 1704 at KES 42.91 per kg - Locally manufactured pasta of Tariff Heading 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared at 20% - Human hair and other products of Tariff Heading 6703 at 5% - Wigs, false beards, eyebrows and eyelashes, switches and the like, and other products of Tariff Heading 6704 at 5% - Artificial nails of Tariff Code 3926.90.90 at 5%
3	Amendment of the definition of other fees	• Proposal to amend the definition of other fees by deleting the words *"relating to their licensed activities".*

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Miscellaneous Fees and Levies

We outline the key Miscellaneous Fees and Levies changes below

#	Enacted change	Details	Our comments
1.	Reduction of Import Declaration Fee (IDF) and Railway Development Levy (RDL).	• The Finance Act has amended Section 7 and 8 of the Miscellaneous Fees and Levies Act (MFLA) by reducing IDF and RDL imposed on goods imported into Kenya for home use from 3.5% to 2.5% and 2% to 1.5% respectively. • Further, the Act has deleted Section 7(2A) ,7(3)(b) and 8(2A) of the MFLA that provide for reduced RDL and IDF rates of 1.5% on the following: a) Raw materials and intermediate products imported by manufacturers upon recommendation to the Commissioner by the Cabinet Secretary for the Ministry of Industry, Trade and Investment (MITI) b) Inputs for the construction of houses under an affordable housing scheme upon recommendation to the Commissioner by the Cabinet Secretary for housing. c) Goods imported under the East African Community(EAC) Duty Remission Scheme **Effective date: 1 July 2023**	• The amendment will reduce the cost of importing goods into Kenya and partly cushion the *mwananchi* from the high prices of imported goods that have soared due to the weakening of the Kenya shilling and other externalities. • However, the deletion of the reduced IDF rate of 1.5% on raw materials/intermediate goods imported by manufacturers, inputs for construction of houses under the affordable housing scheme and goods imported under the Duty Remission scheme will mean that these goods will attract a higher IDF rate of 2.5%. This will increase the cost of importing raw materials and intermediate goods and it is likely that the added cost will be passed on to customers.

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Corporate tax
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Miscellaneous Fees and Levies

#	Enacted change	Details	Our comments
2.	Repeal of annual inflationary adjustments on export levy	• The Act has repealed Section 5(4) of the MFLA, which empowers the Commissioner to adjust the specific rate of export levy to take into account inflation annually. **Effective date: 1 July 2023**	• This amendment is geared towards promoting certainty on the rate of export levy and is aligned to a similar measure to repeal inflationary adjustments on the excise duty rates.
3.	Introduction of export and investment promotion levy (EIPL)	• The Act has introduced a new levy known as export and investment promotion levy that will be imposed on specified goods listed in the Third Schedule of the MFLA when imported into Kenya for home use. Goods that will be subject to EIPL include paper and paperboard products, iron and steel products and cement clinker. Please see table on the next page for the detailed list of the goods subject to EIPL. • However, the Act exempts goods originating from the EAC Partner States in accordance with the EAC Rules of Origin from EIPL. • The funds collected from EIPL will be paid into a fund established and managed in accordance with the Public Finance Management Act, 2012. • The purpose of the levy shall be to provide funds to boost manufacturing, increase exports, create jobs, save on foreign exchange and promote investments. **Effective date: 1 September 2023.**	• Introduction of EIPL is geared towards discouraging importation of goods that are locally manufactured in a bid to protect local manufacturers from competition arising from cheap imports. • According to the Act, EIPL will be used to boost local manufacturing, encourage exports and promote investments. • The Kenyan Government has been promoting investment in the manufacture of iron and steel products, paper and paperboard products in the past through increasing import duty on these products. The introduction of the levy will further increase the cost of importing the foregoing products to further promote local manufacturing of these products. • However, if not properly implemented, this may increase cost of procuring the affected products in the Kenyan market particularly if the local production capacity is insufficient. • The Finance Bill had initially proposed a rate 10% on cement clinker and iron and steel products but this has since been increased to 17.5% in the Act.

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Miscellaneous Fees and Levies

Goods subject to export and investment promotion levy

Tariff No.	Tariff description	Amended EIPL 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, (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; other	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/m2 or less: Unbleached	10% of the customs value
4819.30.00	Sacks and bags, having a base of a width of 40 cm or more	10% of the customs value
4819.40.00	Other sacks and bags, including cones	10% of the customs value

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Miscellaneous Fees and Levies

#	Enacted change	Details	Our comments
4.	Reduction of export levy on raw hides and skins	• The Act has reduced export levy on various raw hides and skins from the higher of 80% or USD 0.52 per Kg to the higher of 50% or USD 0.32 per Kg. The table below provides the detailed list of the affected goods:	• Export levy is imposed on raw hides and skins to discourage exportation of these products and promote local value addition. • However, there appears to be insufficient local demand for raw hides and skins, which has negatively affected the raw hides and skin business by local pastoralists. This amendment is therefore geared towards reducing the cost of exporting raw hides and skins in a bid to increase the profitability of exportation of raw hides and skins.

Tariff No.	Tariff description
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
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.
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
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.
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.

See next page for additional products that have been affected by this amendment

Effective date: 1 July 2023.

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Products affected by the reduction of export levy from the higher of 80% or USD 0.52 per Kg to the higher of 50% or USD 0.32 per Kg

Tariff No.	Tariff description
4103.90.00	Other raw hides and skins other than of reptiles, swine, goats or kids.
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).
4101.50.00	Whole hides and skins, of weight exceeding 16 kg
4101 .90.00	Other, including butts, bends and bellies.
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 or, whether or not split, other than those excluded by Note 1(c) to Chapter 41.
4301.10.00	Raw furskins of mink, whole, with or without head, tail or paws.
4301.80.00	Other raw furskins, whole, with or without head, tail or paws.
4301.90.00	Heads, tail, paws and other pieces or cuttings, suitable for furriers' use.
4302.11.00	Whole skins, with or without head, tail or paws, not assembled, of mink.
4302.19.00	Other whole skins, with or without head, tail or paws, not assembled.
4302.20.00	Heads, tails, paws and other pieces or cuttings, not assembled.
4103.60.00	Raw furskins of fox, whole, with or without head, tail or paws.
4301.30.00	Raw furs kins 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
4302.30.00	Whole skins and pieces or cuttings thereof, assembled.

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Miscellaneous Fees and Levies

#	Enacted change	Details	Our comments
5.	Introduction of export levy on various products	• The Act has amended Part I of the First Schedule to the MFLA by introducing export levy on Molasses resulting from the extraction or refining of sugar of Tariff Heading 1703 at the rate of 20% of the customs value. **Effective date: 1 July 2023**	• The introduction of export levy on the specified products could be geared towards discouraging the exportation of these products.
6.	Alignment of product descriptions and tariff codes specified in the First Schedule of the MFLA	• The Act has amended Part I of the First Schedule to the MFLA, to align Tariff Codes and product descriptions with the East African Community Common External Tariff (EACCET). • See table on the next page for the detailed list of the affected products **Effective date: 1 July 2023**	• The First Schedule of the MFLA specifies goods subject to export levy and includes product descriptions, Tariff Codes and applicable export levy rate. • Some of the Tariff Codes and product descriptions specified in the First Schedule are erroneous and not aligned with the EACCET. • The amendments are aimed at correcting the foregoing errors and aligning the Tariff and product description with the EACCET.

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Products affected by the alignment of tariff codes

Current Tariff Code	Current product description	Enacted Tariff Code	Enacted product description
4101.20.00	Whole hides and skins, of a weight per skin not exceeding 8kg. when simply dried, 10 kg. when dry salted, or 16 kg. when fresh, wet salted or otherwise preserved.	4101.20.00	Whole **unsplit** hides and skins, of a weight per skin not exceeding 8kg. when simply dried, 10 kg. when dry salted, or 16 kg. when fresh, wet salted or otherwise preserved.
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), **with wool** on, whether or not split, other than those excluded by Note (c) to Chapter 41.	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
8002.00.10	Tin waste and scrap	8002.00.00	Tin waste and scrap
8105.00.00	Bismuth and articles thereof including waste and scrap	8106.90.00	Other bismuth and articles thereof including waste and scrap
		8106.10.00	Bismuth and articles thereof including waste and scrap containing more than 99.99% of bismuth, by weight of Tariff Code 8106.10.00
8105.30.00	Waste and scrap of Cobalt matters	8105	Cobalt mattes and other intermediate products of cobalt metallurgy; cobalt and articles thereof, including waste and scrap
8109.30.00	Waste and scrap of Zirconium	8109.31.00	Waste and scrap of Zirconium containing less than 1 part hafnium to 500 parts zirconium by weight of Tariff Code 8109.31.00
8107.30.00	Waste and scrap of Cadmium	8112.61.00	Waste and scrap of Cadmium
8110.20.20	Waste and scrap of Antimony	8110.20.00	Waste and scrap of Antimony

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Miscellaneous Fees and Levies

#	Enacted change	Details	Our comments
7.	Amendment of the IDF and RDL exemption schedule under the Second Schedule of the MFLA	• The Act has amended the Second Schedule of the MFLA as follows: a) By replacing "gifts and supplies for diplomatic and consular missions and to the United Nations" in Part A of the Second Schedule with "goods for official use by diplomatic and consular missions, the United Nations and its agencies, and institutions or organizations exempted under the Privileges and Immunities Act". b) By replacing " goods for official use by a diplomatic mission, institution or organization gazetted under the Privileges and Immunities Act" in Part B of the Second Schedule with "goods for official use by diplomatic and consular missions, the United Nations and its agencies, and institutions or organizations exempted under the Privileges and Immunities Act" c) Expanding the scope of aircrafts and helicopters exempted from IDF to include all aircraft, spacecraft, and parts thereof of Chapter 88. The First Schedule of the MFLA currently provides for exemption of IDF on aircraft excluding aircraft of unladen weight not exceeding 2,000kgs and helicopters. d) Introduction of RDL exemption on all aircraft, spacecraft, and parts thereof of Chapter 88. e) Expanding the scope of goods imported by the Kenya Defence Forces and National Police Service exempted from IDF and RDL to include all goods including material supplies for official use. Currently only equipment, machinery and motor vehicles are exempted from IDF and RDL. f) Introduction of IDF and RDL exemption on goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya; and liquefied petroleum gas. g) Expanding the scope of IDF and RDL exemption to include inputs and raw materials imported by a company which is incorporated for purposes of undertaking other manufacturing activities including refining previously it provided for exemption only on goods, inputs and raw materials imported by a company which is incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least ten billion shillings. h) By introducing IDF and RDL exemption on the supply of denatured ethanol of tariff number 2207.20.00; and bioethanol vapour (BEV) stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel). i) By introducing IDF and RDL exemption on any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation. **Effective date: 1 July 2023**	• The amendment to exempt LPG from IDF and RDL is geared towards reducing the cost of LPG in the market to make it affordable to majority of Kenyans. • Most airlines especially Kenyan based airlines are grappling with high operational costs due to the global increase in the price of fuel and other externalities. The introduction of exemption on all aircrafts and spare parts will aid in reducing operational costs of local airlines in a bid to improve profitability of the airlines. • The amendment of the RDL and IDF exemption provisions for goods imported by diplomatic missions and international organizations is aimed at aligning the exemption with similar exemptions provided under other tax laws.

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Tax Administration

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Tax Administration

We outline the key tax administration changes below

#	Enacted Change	Details	Our comments
1.	Tax amnesty on tax debts for periods leading to 31 December 2022	• The Act has introduced a new Section 37E into the TPA, to provide for an amnesty of interest and penalties on unpaid tax debts for periods leading to 31 December 2022. • A general amnesty of interest and penalties shall apply where the underlying principal tax had been paid by 31 December 2022. • Where not all the principal tax had been paid by 31 December 2022, the taxpayer shall be required to apply to the Commissioner for an amnesty of the interest and penalties and propose a payment plan for the outstanding amount. To qualify for the amnesty, the Act outlines the following requirements: - The amnesty will apply for interest or penalties on unpaid taxes that were due before 31 December 2022, and the taxpayer does not incur further tax debt. - The taxpayer must apply for the amnesty and pay the outstanding principal tax before 30 June 2024. - The taxpayer shall sign a commitment letter for the settlement of all outstanding taxes. • Notably, the tax amnesty shall not be applicable to any tax avoidance penalties or interest imposed under Section 85 of the TPA. **Effective date: 1 September 2023**	• The tax amnesty provides an avenue for taxpayers to voluntarily correct mistakes or omissions that result in tax liability without being penalized. We expect the amnesty to improve revenue collection in the short term and tax compliance going forward. • Taxpayers are therefore advised to review their tax affairs to take early advantage of the amnesty. • The general amnesty of interest and penalties for all taxpayers where the underlying principal tax had been paid before 31 December 2022 is also a welcome reprieve. This will provide taxpayers the opportunity to review and clean up their iTax ledgers with a view to eliminate accrued interest and penalties as at 31 December 2022.

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2.	Withholding VAT to be remitted within 5 working days	• The Act has amended Section 42A of the TPA to require withholding VAT agents to remit withholding VAT to the KRA within 5 working days after the deduction is made. **Effective date: 1 July 2023**	• The amendment could be aimed at meeting the Government's immediate revenue or expenditure cashflow requirements. However, remitting withholding VAT within 5 working days will potentially impose an unreasonable compliance burden on the affected taxpayers.
3.	All taxpayers to be required to issue electronic tax invoices	• The Act has introduced a new Section 23A into the TPA, empowering the Commissioner to establish an electronic system for the issuance of electronic tax invoices. • The new provision further requires taxpayers carrying on a business in Kenya to issue electronic tax invoices through the above-mentioned system and maintain records of stocks in the system. • Additionally, all invoices required to ascertain the tax liability of residents or permanent establishments ("PEs") of non-residents shall be issued via the electronic system. • The provision further provides that the Commissioner may, by notice in the Gazette, exempt a person from these requirements. • The above requirements, however, will not apply to certain payments, being, emoluments payable to employees, imports, investment allowances, interest, airline passenger ticketing and similar payments. **Effective date: 1 September 2023**	• This amendment codifies within the TPA the requirement for taxpayers to issue electronic tax invoices through a KRA system, such as the current Tax Invoice Management System ("TIMS") and the recently launched e-TIMS. Presently, only VAT-registered taxpayers are required to issue electronic tax invoices. • The amendment will require all taxpayers carrying on business in Kenya to issue electronic tax invoices. It is likely this measure is intended to increase KRA's visibility of transactions concluded by taxpayers and enforce or monitor compliance with existing legislation. • Notably, certain payments are excluded from these requirements, being, emoluments payable to employees, imports, investment allowances, interest, airline passenger ticketing and similar payments. While this is welcome, as it recognizes that not all payments are invoice based, it may be necessary to define 'similar payments' in future revisions of the TPA with a view to eliminate ambiguities that may result in tax controversies.

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#	Enacted Change	Details	Our comments
4.	Amendment of assessments	• The Act has amended Section 31 of the TPA by deleting the phrase “original assessments” and replacing therefor the word “assessment”. **Effective date: 1 July 2023**	• The new provision clarifies that the scope of the Commissioner's powers to amend a taxpayer’s self-assessment return and demand additional taxes covers not only the first (or original self-assessment), but also any other subsequent or amended self-assessment returns submitted by taxpayers.
5.	Abolition of waivers of penalties and interest and abandonment of tax	• The Act has repealed Sections 37 and 89(6) to 89(8) from the TPA. The repealed provisions allowed the Commissioner to abandon taxes, with the Cabinet Secretary’s approval, where it was impossible to recover unpaid taxes due to undue expense, difficulty or inequity in recovering the tax, or any other reasonable grounds. • The provisions also empowered the Commissioner to waive, in whole or in part, penalties or interest, where there is undue expense, difficulty or inequity in recovering the tax; or due to considerations of hardship or equity. **Effective date: 1 July 2023**	• The amendment withdraws the Commissioner’s powers to grant waivers or abandon taxes due. This is in line with various policy pronouncements in the recent past, which indicate the Government’s intent to overhaul the regime governing tax reliefs, waivers, remissions and abandonments. This is also in line with the State’s aim to ensure that all taxpayers pay their “fair share of taxes”, in light of increased pressures to enhance revenue collection. • On the upshot, in the medium-term, taxpayers can take advantage of the tax amnesty introduced under Section 37E of the TPA for a waiver of interest and penalties accrued as at 31 December 2022.

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Tax Administration

#	Enacted Change	Details	Our comments
6.	Agency notices to be issued under additional circumstances	• The Act has amended Section 42 of the TPA, which empowers the Commissioner to issue agency notices where there are unpaid taxes. • Specifically, the Act restricts the issuance of agency notices by the Commissioner to the following circumstances: - Where the taxpayer has defaulted in paying an instalment under an agreed payment plan with the KRA. - Where the Commissioner has raised an assessment and the taxpayer has not objected to the assessment within 30 days. - Where the taxpayer has not appealed against an objection decision within 30 days. - Where the taxpayer has filed a return but has not paid the taxes by the due date. - Where the taxpayer has not appealed a decision of the TAT or court which is in the KRA's favour. **Effective date: 1 July 2023**.	• This is a welcome move as it clarifies the circumstances under which the Commissioner can issue an agency notice.

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#	Enacted Change	Details	Our comments
7.	Refund or offset of overpaid tax.	• The Act has amended Section 47 of the TPA to allow taxpayers to apply for offset of overpaid tax against their outstanding tax debts, which application should be determined within 90 days. Presently, the law only allows taxpayers to apply for an offset against future tax liabilities. • The Act further amends the provision to provide that where a taxpayer applies for a refund of overpaid tax instead, the overpaid tax shall be repaid within 6 months of the refund's ascertainment. If not repaid within 6 months, the refund shall be used to offset the taxpayer's outstanding or future tax liabilities. • In addition, the Act introduces a requirement for the Commissioner to determine an application for refund or offset of overpaid tax within 120 days in instances where the claim has been subjected to an audit. Where the claim has not been subjected to an audit, the 90-day limit for the Commissioner to make a decision on the application remains. **Effective date: 1 July 2023**	• The changes are progressive, as they allow taxpayers to offset tax overpayments against past, current and future tax liabilities. • The changes will allow taxpayers to offset overpayments against their liabilities without further reference to the KRA, where the Commissioner does not determine the offset application within the prescribed timelines. • Further, by providing that approved refunds shall be repaid to taxpayers within 6 months, the amendment will enhance efficiency in the processing of refunds.

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#	Enacted Change	Details	Our comments
8.	Appointment of rental income tax agents	• The Act has amended the TPA by introducing Section 42C, which will provide for the appointment of agents for the collection and remittance of rental income tax. • Section 42A further confirms that such an appointment may be revoked by the Commissioner at any time. **Effective date: 1 July 2023**	• This amendment aims to provide for the appointment of rental income tax agents, in line with the new changes in the Income Tax Act requiring persons who receive rental income on behalf of proprietors to deduct and remit withholding tax. This appointment may be revoked by the Commissioner at any time.
9.	Objections	• The Act has amended Section 51 of the TPA to require the Commissioner to request a taxpayer to submit the information specified in an invalidation notice within 7 days. • Where a taxpayer fails to provide the information within the 7 days, the Commissioner shall issue an objection decision within 60 days of the date the taxpayer initially lodged the objection. **Effective date: 1 July 2023**	• The amendment seeks to plug a gap in the existing framework governing objections. Currently, Section 51 allows the Commissioner to issue an invalidation notice indicating that a taxpayer's objection has not been validly lodged but provides no recourse for the taxpayer to remedy the defect that rendered their objection invalid. • By requiring the Commissioner to specify the information required to remedy such defects, the amendment will afford taxpayers an opportunity to remedy otherwise invalid objections. • The amendment also introduces certainty to the extent that it clarifies that the issuance of an invalidation notice does not negate the Commissioner's obligation to issue an objection decision within the prescribed timelines (i.e., 60 days).

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#	Enacted Change	Details	Our comments
10.	Procedure for appeal before the TAT	• The Act has amended Section 13 of the Tax Appeals Tribunal Act, 2023 ("TAT Act") to provide that in addition to the requirement to submit a memorandum of appeal and statement of facts within 14 days of filing a notice of appeal, a taxpayer shall also be required to submit: - The appealable decision; and - Such other documents as may be necessary to enable the TAT to make a decision. • The Act further clarifies that the "appealable decision" shall have the meaning assigned to it under the TPA. The TPA defines an appealable decision to include 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. **Effective date: 1 July 2023**	• The amendment is a clean-up exercise to harmonize the TPA and the TAT Act with respect to the jurisdiction and practice before the TAT, by clarifying that the TAT's jurisdiction is limited to purely appealable decisions. • Further, the requirement to produce "such other documents" as necessary for the TAT to make a decision empowers taxpayers to adduce documentary evidence in support of their appeal. The presumed intention of this change is to confirm that taxpayers ought to submit the evidence they seek to rely upon in an appeal together with their appeal papers.
11.	Alternative Dispute Resolution ("ADR") at the TAT or courts of law	• The Act has amended Section 55 of the TPA to increase the timelines for the settlement of tax disputes via the ADR process from the current 90 days to 120 days from the date the TAT or court permits the ADR engagements. **Effective date: 1 July 2023**	• This amendment is auspicious for both taxpayers and the KRA as it provides an additional 30 days (to the current 90 days provided in law) for ADR discussions. • The change is also aligned with the constitutional imperative under Article 159 for courts and tribunals to promote ADR arrangements.

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#	Enacted Change	Details	Our comments
12.	Recovery of taxes due to other countries under international agreements for mutual administrative assistance	• The Act amends Section 6A of the TPA to provide that multilateral agreements relating to mutual administrative assistance in tax matters between Kenya and other states shall take effect as stipulated in those agreements. • The Act further amends the TPA by introducing a new Section 32A to empower the Commissioner to recover or collect a tax claim under such agreements, in response to a request by the competent authority of another country that is party to the multilateral agreement. **Effective date: 1 July 2023**	• The amendments seek to formally recognize, in domestic law, conventions signed by Kenya regarding mutual administrative assistance with other revenue authorities. • The changes further empower the KRA to assist the revenue authorities of other countries to recover foreign tax claims or liabilities from persons in Kenya. This would be in line with the Convention on Mutual Administrative Assistance in Tax Matters, which Kenya signed in 2016.
13.	Record keeping requirements for resident trustees	• The Act has amended Section 23 of the TPA to require residents who are trustees of trusts, whether registered in or outside Kenya to maintain and avail to the KRA records as required under existing tax legislation, irrespective of whether the income generated by the trust is subject to tax in Kenya or not. **Effective date: 1 July 2023**	• The changes obligate all resident trustees to maintain records of the trusts they administer and to produce the same for inspection if so required. • The amendment reflects the continuing clamor by the KRA to monitor the activities of trusts, which are considered to be high-risk vehicles for tax-related risks such as tax evasion.

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#	Enacted Change	Details	Our comments
14.	Exemption of registered manufacturers from withholding VAT requirements	• The Act has amended Section 42A of the TPA to clarify that the exemption of registered manufacturers from the withholding VAT requirements should only apply to the manufacturers whose value of investment in the preceding three years from 1 July 2022 was at least KES 3 billion. **Effective date: 1 July 2023**	• The exemption of registered manufacturers who meet the threshold stipulated in the TPA was introduced by the Finance Act 2022. • However, the amendment was open to different interpretations as one was required to have met the threshold of KES 3 billion in the three years preceding the "commencement of the Act". Since the amendment was introduced to the TPA by the Finance Act 2022, the ambiguity on whether the Act referred to in the Section was the TPA or the Finance Act 2022 needed to be addressed hence, the amendment through the Finance Act, 2023.
15.	New data management and reporting system ("DMRS")	• The Act has introduced a new Section 59A into the TPA, to empower the Commissioner to establish a DMRS for the submission of electronic documents, including: - Electronic invoice returns in respect of transactions e.g., payments received or made regarding goods, services, royalties and any other transactions; and - Transactional data, such as the names and addresses of parties to transactions, and any other details as required by the Commissioner. • Taxpayers are required to provide such information through the DMRS upon receipt of a written notice from the Commissioner. **Effective date: 1 September 2023**	• The amendment signals the KRA's intent to gain enhanced visibility of taxpayers' transactions, with the aim of enhancing compliance and revenue collection. • Taxpayers shall have to submit documents specified under the new Section 59A of the TPA via the DMRS as required via a written notice from the KRA.

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#	Enacted Change	Details	Our comments
16.	Penalties and sanctions	• The Act has amended the TPA by introducing higher rates and new penalties and offences as follows: - An increase in the penalty for failing to issue an electronic invoice, submit a tax return in electronic form or make a payment electronically via the KRA's systems from KES 100,000 to two times the tax due. **Effective date: 1st September 2023** - A criminal offence of impersonating a KRA officer, attracting a sentence of 3 years upon conviction. **Effective date: 1 July 2023.**	• The amendments are targeted at acting as a further deterrence against non-compliance with tax laws.

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Tax Administration

The following proposals contained in the Finance Bill, 2023 were omitted in the Finance Act, 2023

#	Proposal	Details	Our comments
1.	Deposit of security before appealing against a judgement of the TAT to the High Court	• The Finance Bill had proposed an amendment in the Tax Appeals Tribunal Act that would have required taxpayers aggrieved by a decision of the Tax Appeals Tribunal (TAT) to deposit twenty percent (20%) of the disputed tax, or security of an equivalent amount, with the Commissioner before filing the appeal at the High Court.	• This proposal was rejected after due consideration was given to the proposal's potential negative effects on taxpayers' rights to fair administration action and access to justice in line with Articles 47 and 48 of the Constitution of Kenya, 2010; as well as the usurpation of the court's inherent jurisdiction.
2.	Security for unpaid taxes	• The Finance Bill had proposed to amend Section 40 of the TPA to provide that the Commissioner shall inform a taxpayer within 14 days of the registration of the security on their property. Currently, the TPA requires the Commissioner to notify a taxpayer 7 days from the date he notifies the Registrar of the property (whether lands, motor vehicles, ships, aircraft or any other property) to register the security.	• This proposal would have empowered the Commissioner to register securities on taxpayers' property without their prior knowledge and without affording them an opportunity to contest the registration or remedy the situation by paying the taxes due. This power would have been prone to abuse and infringed upon taxpayers' rights to fair administrative action, property and access to justice.
3.	Grounds of appeal to the TAT or courts	• The Finance Bill proposed to amend Section 56 of the TPA to prevent the TAT or court from allowing a taxpayer to rely on grounds other than those contained in their objection.	• The proposed amendment was rejected owing to its potential violation of taxpayers' right to access to justice and a fair trial, as well as the undue limitation of the court's jurisdiction.

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Tax Administration

The following proposals contained in the Finance Bill, 2023 were omitted in the Finance Act, 2023

#	Proposal	Details	Our comments
4.	Penalties and sanctions	• The Finance Bill sought to amend the TPA by introducing higher rates of penalties as follows: - An increase in the tax shortfall penalty from 7.5% of the shortfall to double the amount of the shortfall. - An increase in the penalty for failing to issue an electronic invoice, tax return or make a payment electronically via the KRA's systems from KES 100,000 to the higher of 10 times of the tax due or KES 1 million.	• The proposed amendment to increase the tax shortfall penalty to double the shortfall amount was rejected due to its excessive and punitive nature. • The penalty for failure to issue electronic invoice, tax return or make a payment electronically via the KRA's systems was also revised downwards to two times the tax due on similar grounds.
5.	Concurrent civil and criminal proceedings in tax disputes	• The Finance Bill proposed to introducing a new Section 108A to provide that a dispute under a tax law can be prosecuted concurrently under both criminal and civil proceedings. In effect, the existence of a tax matter in a civil case shall not be grounds for stay of a criminal case where the same matter is in question, and vice versa.	• This proposal was dropped due to its potential infringement on taxpayers' rights and undue interference with the court's discretion to allow a stay of proceedings where there are concurrent matters with respect to the same subject.

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Other Measures

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Other Measures

#	Enacted change	Details	Our comments
1.	Repeal of Section 4 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015	• The Act has repealed Section 4 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015, which provided for circumstances under which benefits may not be paid to entitled persons, surviving spouse or children. The conditions for non-payment of the benefits included actively engaging in the activities of any political party, being guilty of gross misconduct, conviction of an offence resulting in a sentence of a 3-year imprisonment, among others. The section also provided that where an entitled person holds an appointive or elective post in Government, the benefits would be reduced by the rate of pay they would be receiving under the posts.	• This amendment is set to align the Act to a judicial decision rendered by the High Court of Kenya in May 2019 declaring the section unconstitutional. The repeal of this section means that qualifying persons will enjoy the benefits even if they choose to engage in active politics, are removed from office for acting in violation of the constitution and/or when they suffer conviction and imprisonment, grounds upon which the said resolution could have been passed against under the current law.
2.	Entitlements for person holding appointive or elective position in Government.	• The Act has introduced Section 4A to the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015, to highlight the benefits payable to entitled persons who hold appointive or elective offices in Government and who previously held positions for which pension is payable under the Act. The benefits include a monthly pension equal to 8% of the entitled person's last monthly salary while in office and a lumpsum payment equal to one year's salary for each term served in office. The Act has also specifically enumerated the benefits that shall be withdrawn until they cease to hold the appointive or elective posts.	• The change decreases the monthly pension benefits accruing to such officers from 80% to 8% of the last salary. All other benefits will be scraped off for the time that the entitled person continues to hold an elective or appointive office. This is a welcome move as it averts a situation where the affected person enjoys similar benefits both under the Retirement Benefits Act and as an appointed/elected official.

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#	Enacted change	Details	Our comments
3.	Entitlement to parliamentary pension	• The Act has further introduced section 4B to the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 to preserve the benefits of people entitled to pension under the Parliamentary Pensions Act, while at the same time, also enjoying the benefits and pension conferred under the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015.	• This will put more pressure on the already troubled exchequer. It might come across as insensitive at a time when most Kenyans are unable to afford the basics of life and the government is struggling to provide public services due to cash constraints.
4.	Amendments to Section 5,6, 7 and 16 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015	• Section 5, 6 and 7 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 have been amended to expand the scope of the medical cover to include entitled person's children who are below eighteen years or under twenty-five years of age provided that the child is undergoing a course of full-time education and is not married in the case of female children. • Section 5(2) has been deleted meaning that entitled persons who serve in office for less than a term will still enjoy full benefits listed under the Act. • The Act has also repealed section 16 which provided for the set-off of benefits already received by an entitled person under any other law or policy. This means that the benefits will be paid in full.	• This may be considered insensitive and a tongue-in-cheek considering the current economic turbulences in the country. • It appears to be an enhancement of benefits to people who are already privileged in many respects. • The specification on "female children" could face legal challenges by virtue that it might be construed as discrimination on the basis of gender. • The deletion of section 5(2) could also create a situation where an entitled person gets benefits under both the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 and any other Act or Policy.

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Other Measures

#	Enacted change	Details	Our comments
5.	Unclaimed Financial Assets Act, 2011	• The Act has amended section 28 of the Unclaimed Financial Assets Act, 2011, in subsection (5), to provide for claimants to designate beneficiaries of their unclaimed assets or to a cause of their choice. • Currently claims are paid exclusively to the claimant.	• This may be aimed at expediting the process of paying over the assets or proceeds of disposal of the said assets to the claimant or their designate without undue delay caused by the inability of the actual claimant availing himself/herself to collect the same. • This is a welcome move as it will ease the burden on claimants who are incapacitated or unable to make frequent follow-ups, as they can now designate someone or a professional to follow up on their behalf.
6.	The Kenya Revenue Authority Act	• The Act has amended Section 5 of the KRA Act by deleting "for the better carrying out of its functions" in subsection 2A and substituting it with "the staff of the Authority, general public and other jurisdictions". • Subsection 2A previously read "*The Authority may establish an institution to provide capacity building and training for the better carrying out of its functions".* • The Act amends Section 13 of the KRA Act in subsection (1) by inserting the words "and Deputy Commissioners" immediately after the word "Commissioners". Effectively giving the Board of the Kenya Revenue Authority the mandate to appoint Deputy Commissioners. Hitherto, this was a function of the Commissioner General of the KRA.	• This move aims at showing the efforts by the Revenue Authority to enlighten and improve the delivery of their services to the general public, in a bid to enhance good relationship between the taxman and the taxpayers. • The amendment of Section 13 is a surprise move considering that the change was not contained in the Finance Bill 2023. Furthermore, the provisions seem to give the board executive powers to appoint fairly lower ranking officers of the KRA, which might be construed to be undue involvement in management of the organization. This flies in the face of good corporate governance. The change is likely to be challenged in court

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Enacted

Other Measures

#	Enacted change	Details	Our comments
7.	Betting, Lotteries and Gaming Act	• The Act has introduced Section 69AA to the Betting, Lotteries and Gaming Act, which seeks to administer certain sections of the Betting. Lotteries and Gaming Act under the Tax Procedures Act 2015 (TPA). These include various offences such as conducting betting in public or non-designated places, failing to furnish the required accounts, records and returns, and conducting prize competitions without a permit.	• This move aims at centralizing the administration and collection of taxes under the provisions of the Tax Procedures Act. It will leverage the capacity, infrastructure, competency and efficiency that the Kenya Revenue Authority has built over time, and which will be brought to bear on the sector.
8.	Kenya Roads Board Act, 1999	• The Act has amended Section 35 of the Kenya Roads Boards Act to introduce Subsection 2A, which requires the submission of annual estimates together with a collated roads programme pursuant to sec. 19 • Section 19 of the Kenya Road Boards Act, defines an annual road programme as a comprehensive plan that ensures the rehabilitation and development of roads. • Section 7 is amended to remove the requirement to have the Permanent Secretary for Transport and Communication or his designate in the board. Further, the number of board members to be nominated from the organisations specified in the First Schedule is reduced from 8 to 5.	• The amendment to Section 35 will foster accountability in the Kenya Roads Board's budget process and make fund allocations more transparent. • On the other hand, the amendment to Section 7 may be meant to cut down on expenditure of running the board by removing representation from The Institute of Surveyors of Kenya, The Kenya National Farmers Union and The Kenya Association of Tour Operators, whose contribution in the board may not be considered of great technical significance.
9.	Retirement Benefits Act, 1997	• The Act has amended Section 25B subsection (1) of the Retirement Benefits Act, 1997 by substituting the words "sixty percent" appearing in paragraph (eb) with "thirty three percent". • Following the amendment, applicants for registration as a scheme administrators shall now be required to only have at least thirty three percent of their paid-up share capital owned by Kenyan citizens, unless the applicant is a bank or an insurance company.	• This is a friendly move to entities and other applicants with interests in schemes administration.

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Other Measures

The following additional enacted measures were not part of the proposals under the Finance Bill

#	Enacted change	Details	Our comments
10.	The Kenya Revenue Authority Act	• The First Schedule to the KRA Act, 1995 has been amended to include "The Alcoholic Drinks Act, 2010" in the list of the Written Laws Relating to Revenue.	• This adds The Alcoholic Drinks Act under the purview of revenue administration in addition to 12 others
11.	Alcoholic Drinks Control Act, 2010	• The Act has amended Section 31 of the Alcoholic Drinks Control Act, 2010 to prohibit the sale, manufacture or distribution of alcoholic drinks at a price below the **minimum input cost.** • The Act has also amended Section 2 of the Alcoholic Drinks Control Act, 2010 to provide a definition of the term "**minimum input cost".** The term is defined to mean *"input cost published by the Kenya Revenue Authority through excise regulations"*.	• The amendment is aimed at plugging tax revenue leakages occasioned by the sale of cheap alcohol by manufacturers.
12.	The Statutory Instruments, Act 2013	• The Act has repealed Section 21 of the Statutory Instruments Act, which provides for automatic revocation of statutory instruments. Currently, the legislation provides that a statutory instrument is by virtue of section 21 revoked after ten years following the making of the statutory instrument, unless an extension of its operation is made.	• This is meant to align the provisions of the Statutory Instruments Act, 2013 to the Revision of Laws Act with regards to the expiration of statutory instruments upon enactment. • It also removes the uncertainty that ensues at the expiry of a statutory instrument, especially if the office responsible for amending or extending the instrument is unable to do so either due to personal incapacity or other reasons

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Other Measures
The following additional enacted measures were not part of the proposals under the Finance Bill

#	Enacted change	Details	Our comments
13.	Special Economic Zones Act, 2015	• The Act has amended Section 6 to exempt the importation of goods whose content originates from the customs territory from import duties. • On the other hand, goods which partially originate from the customs territory shall attract import duties on the non-originating component in accordance with customs procedures. • Previously, goods imported from an SEZ were exempt from the payment of import duty regardless of the origin of their content.	• The move aims to restrict the exemption from import duty to goods exported from an SEZ whose content originates from the customs territory.
14.	Export Processing Zones Act, 1990	• The Act has amended Section 24 of the Export Processing Zones Act, 1990 to exempt the importation of goods whose content originates from the customs territory from import duties. • On the other hand, goods which partially originate from the customs territory shall attract import duties on the non-originating component in accordance with customs procedures. • Previously, goods imported from an EPZ were exempt from the payment of import duty regardless of the origin of their content.	• The move is aimed at restricting the exemption from import duty to goods exported from an EPZ whose content originates from the customs territory.
15.	Retirement Benefits Act, 1997	• Section 38 of the Retirement Benefits Act, 1997 has also been amended by introducing a new subsection after subsection 1 (1A), which stipulates that "Subject to subsection (1) (b), where a fund is set up exclusively for the purpose of investing sharia complaint funds, the fund shall be exempted from the guidelines". • Section 1(b) prohibits use of scheme funds in investing contrary to any guidelines prescribed for the scheme fund purpose.	• This gives consent for the scheme funds to set up for purpose of investing in sharia compliant funds. This flexibility may attract more investing to such schemes.

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