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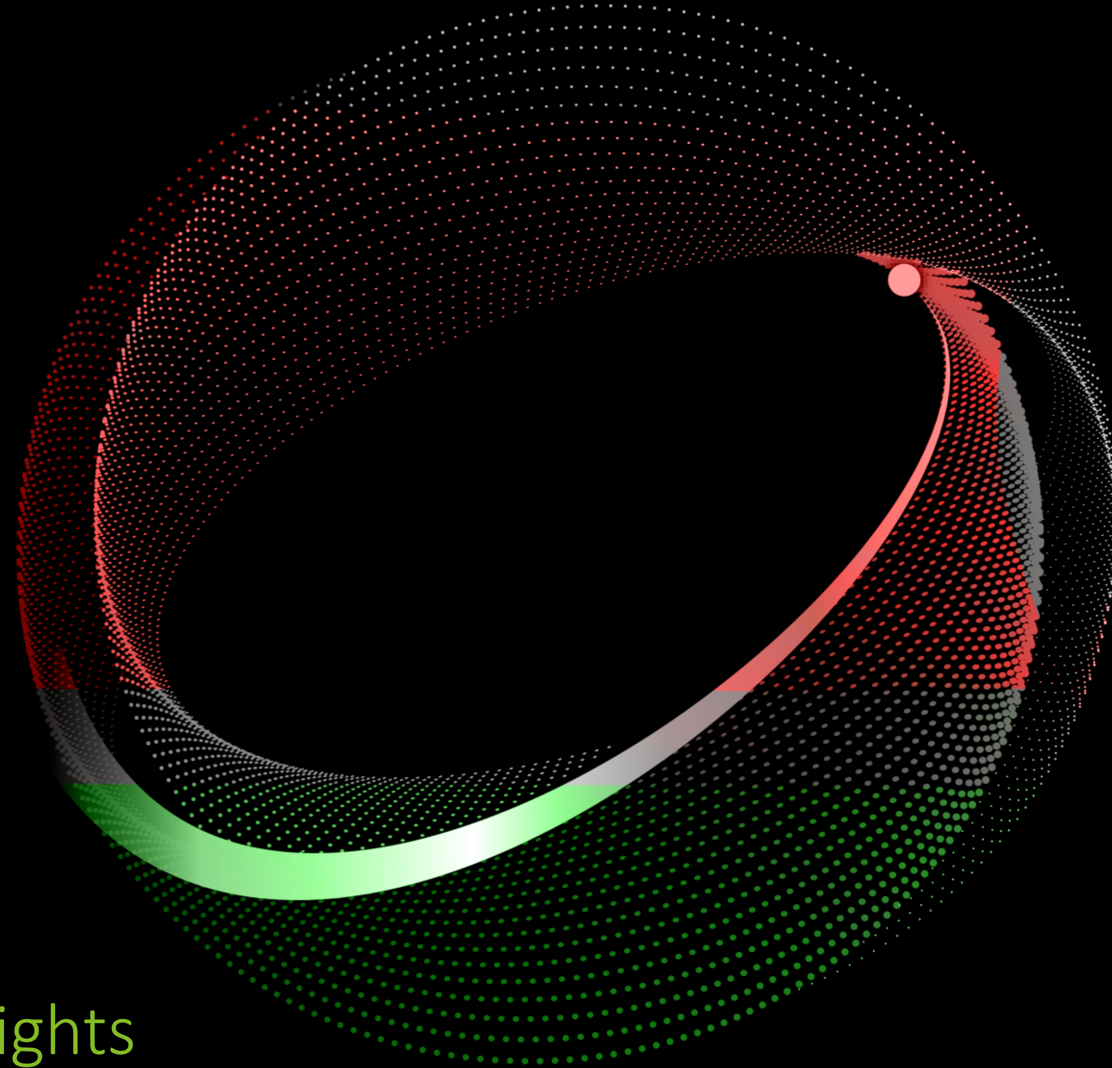

Finance Bill 2023 Insights

Navigating headwinds for inclusive growth

MAY 2023

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Finance Bill 2023 Insights

Introduction

The Finance Bill, 2023 (“the Bill”) was published on **28th April 2023** and tabled in Parliament for the first reading on **4th May 2023**. The Bill has proposed a raft of changes and amendments to the various tax statutes in Kenya, and other related laws.

The proposed tax measures are significant and may increase the burden on taxpayers both as a result of tax increases and tighter administrative measures. There are some welcome measures to expand the tax base. The overall picture is one of a Government keen to shore up tax revenues in the short term to make ends meet but unable to resist the temptation to continuously raid the easy targets, be it individuals in formal employment or products that are already heavily taxed like petroleum products.

The Parliament vide the Department Committee on Finance and National Planning has invited the public to submit comments on the Bill by **Saturday, 20th May 2023** before it is approved by Parliament and assented into law by 30th June 2023. It is expected that public participation and the debate in Parliament will lead to some changes on the Bill prior to it being passed into law.

This publication provides a detailed analysis of the amendments proposed in the Bill and their economic and fiscal impact.

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Corporate Tax

We outline the key corporate tax proposals below.

#	Proposed change	Details	Our comments
I.	EBITDA-based interest limitation rule changes	• The Bill proposes to amend the interest limitation rule in Section 16 (2) (j) of the Income Tax Act by: a) Deleting the provision that required total interest (including that which is paid to both resident and non-resident persons) above 30% of the earnings before interest, taxes and depreciation (EBITDA) to be disallowed and introducing a provision that disallows only the interest that is paid or payable to non-residents in excess of 30% of EBITDA; b) Introducing a provision that allows persons up to 3 years after a year of income to claim a deduction of the interest disallowed under section 16(2)(j) if the interest paid or payable to non-resident persons in any of the subsequent 3 years falls to 30% of EBITDA or lower; c) Excluding any interest that is exempt from income tax from the interest restriction rules; and d) Deleting the following companies from the list of entities that are currently excluded 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 Bill also proposes to amend 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 proposal to exclude interest expense paid or payable to resident persons from the interest restriction rule is a positive move, as the current provision discourages borrowing from both local and foreign sources. • However, the proposal to remove manufacturing entities from the list of entities excluded from the EBITDA-based interest limitation rule could send wrong signals to investors and potential investors on the government’s support in the manufacturing sector. Investments in the sector are capital intensive and might require debt financing which may not be readily available in the domestic market.

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Corporate Tax

#	Proposed change	Details	Our comments
2.	Limitation on deductibility of deferred realized foreign exchange losses	• The Finance Bill proposes to introduce a timeline of three 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 thirty percent (30%) of the company's Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA) in any year of income. **Effective date: 1 July 2023.**	• This is a welcome proposal, as it provides for deferral of realized foreign exchange losses only where gross interest paid or payable to non-resident persons exceed 30% of EBITDA. Currently, the deferral applies to all companies whose total interest (paid to both resident and non-resident persons) exceed 30% of EBITDA. • The provision provides clarity on when the deferred forex loss should be claimed, as it allows a claim of forex loss as soon as it is realized but over 3 years. While this may appear as a positive move given that the current provision does not quite state whether the realized forex loss should be claimed (it states the realized forex loss shall be deferred), it should be noted that the practice has been to claim all the realized forex once the company is no longer thinly capitalized. • Notwithstanding the positives of this provision, we note that the provision will likely introduce an administrative inconvenience of having to track realized losses for claim especially where the loan is repaid every year.

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Corporate Tax

#	Proposed change	Details	Our comments
3.	No deduction to be allowed where an invoice is not generated through e-TIMS	• The Bill proposes to introduce 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") except where the transactions have been exempted in accordance with the Tax Procedures Act, 2015 (TPA). **Effective date: 1 January 2024.**	• The move is aimed at sealing any revenue leakages that may be occasioned by taxpayers claiming expenditure on fictitious invoices. • The TPA is to be amended to compel all taxpayers carrying on business in Kenya to issue invoices through an electronic system. Save for emoluments, imports, investment allowances, interest and similar payments, invoices for all other transactions will need to be generated through the electronic system. • The government will hope that this measure will enhance revenue collection by enabling KRA to have visibility of all the income and expenditure of taxpayers. However, the measure will likely increase compliance costs, as it will compel businesses to set-up systems that ensure compliance with the e-TIMS requirement.
4.	Club fees paid on behalf of an employee to be allowable	• The Bill proposes to amend section 16 (2) of the Income Tax Act by deleting item (v) appearing in paragraph (a), which 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 Finance Act, 2020 deleted Section 15 (2) (v), which entitled employers to a deduction in respect of club subscriptions paid on behalf of an employee. However, Section 16(2)(a)(v) was maintained, implying that the club subscriptions were not allowable (regardless of whether they were taxable on the relevant employees or not). • The proposal to delete Section 16(2)(a)(v) now means that expenditure incurred on club subscriptions should be allowed. • The Bill has also proposed to amend Section 5(2) of the Income Tax Act to treat club entrance and subscription fees disallowed against the employer's income as a taxable benefit on the employee. Although the intention of this provision could be to tax entrance and subscription fees paid by an employer on the employee, it creates ambiguity since the Income Tax Act is to be amended to allow the fees on the employer.

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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Corporate Tax

#	Proposed changes	Details	Our comments
5.	Taxation of a permanent establishment (PE) of a foreign entity and repatriated income of the PE	• The Bill proposes to amend the Income Tax Act's Third Schedule to reduce the corporate income tax rate for a non-resident company operating in Kenya through a permanent establishment (PE)/ branch from 37.5% to 30%. • The Bill also proposes to introduce a tax on the repatriated profit of the branch (although the rate has not been specified). The repatriated profit 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 Bill has defined the term "net assets" as the total book value of assets less total liabilities for the year of income excluding revaluation of assets. **Effective date: 1 January 2024.**	• This proposal aims at aligning the taxation of foreign companies that operate in Kenya through a branch with locally incorporated entities. • However, there appears to be an omission in the Bill, as the applicable tax rate on the repatriated profit has not been stated. Borrowing from regional markets such as Tanzania, the tax rate on the repatriated profits of a branch is usually what would apply on dividends payable to a non-resident shareholder. If this were to be the case, the rate should be 15% or as stipulated under a double taxation agreement. There is need to amend the proposal to introduce the rate before assent. • If passed, the amendment will make the taxation of a branch set up to be similar to that of a locally incorporated entity. The only differences shall be on the deductibility of expenses payable by a branch to the head-office, which are generally not allowable on the branch.

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Corporate Tax

#	Proposed changes	Details	Our comments
6.	Administrative expenses of a branch/ PE to be allowed	• Section 18, which guides the determination of the taxable income of a branch/ PE of a non-resident is to be 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.**	• There is an attempt to align the taxation of a branch/ PE of a foreign company to that of a locally incorporated entity. The proposal to reduce the corporate tax rate of a branch/ PE from 37.5% to 30% and the proposal to introduce tax on the repatriated income of a branch/ PE is testament of this. • It is therefore not surprising to see proposals to allow certain expenses of a branch that have for the longest time been treated as non-deductible. • With the proposal to delete Section 18(4), one would also have hoped that section 18(5) of the Income Tax Act would also be deleted. Section 18(5) prohibits a deduction in respect of management or professional fees, interest and royalties paid or purported to be paid by a PE of a non-resident person to the non-resident.

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Corporate Tax

#	Proposed change	Details	Our comments
7.	Diminution allowance to be claimable at the rate of 100%	• The Bill proposes 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. Currently, the deductible amount is the "amount considered by the Commissioner to be just and reasonable". **Effective date: 1 July 2023.**	• The proposed change will simplify the computation of diminution allowance while at the same time align the allowance to the accounting useful life of the implement, utensils and tools which in most instances is one year.
8.	Turnover tax band and rate revised	• The Bill proposes to amend Section 12C so that the turnover range within which turnover tax is applicable changes from the current range of KES 1m to KES 50m to a range of KES 500k to KES 15m. • Further it is proposed that Third Schedule of the Income Tax Act be amended so that the turnover tax rate is increase from 1% to 3%. **Effective date: 1 July 2023.**	• The proposal to change the turnover tax band is aimed at limiting the applicability of turnover tax to small and micro-businesses, mainly in the informal sector. Medium-sized businesses that currently fall within the regime will be pushed to the normal corporate income tax regime. • The increase in the rate is purely aimed at shoring tax revenue. However, the increase is quite steep, and may encourage non-compliance.

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Corporate Tax

#	Proposed change	Details	Our comments
9.	Taxation of members' clubs and trade associations	• The Bill proposes to amend the tax regime of members' clubs and trade associations in Section 21 of the Income Tax Act by deleting the current provisions in both subsection 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."* • Currently, all the gross receipts of a members' club (including entrance fees and subscriptions) are taxable. However, where the gross receipts (other than gross investment receipts) from members exceed 75% of the total receipts, only gross investment receipts are taxable. A trade association is on the other hand only taxable to the extent that the association elects to the Commissioner, in writing to be deemed to be carrying on business. The taxable income of a trade association comprises of gross receipts on revenue account (including entrance fees and annual subscriptions) from transactions with its members and other persons. **Effective date: 1 July 2023.**	• Trade associations will no longer be required to elect to the Commissioner to be taxed. • Further, joining fees, welfare contributions and subscriptions relating to both a trade association and a members' club shall be exempt from tax. • The proposed changes simplify the taxation of trade associations and members' clubs and will create certainty in taxation, as trade associations will no-longer be required to elect to be taxed.

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Corporate Tax

#	Proposed change	Details	Our comments
10.	Clarity on charitable institutions exempt under paragraph 10 of first schedule	• The Bill proposes to limit exempt income under paragraph 10 of the First Schedule to incomes of an institution 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.**	• The change offers clarity and objectivity as to the criteria to be met for an institution to qualify for exemption under paragraph 10 of the Income Tax Act's First Schedule.
11.	Introduction of industrial building and Dock investment allowances	• The Bill proposes to amend the Second Schedule of the ITA to introduce "Industrial Buildings" and "Dock" within the categories of assets that are subject to investment allowances. • Industrial buildings and docks will be subject to investment allowances at the rate of 10% per year on straight-line basis. • The Bill has defined the terms industrial building and dock as: *"dock" includes a container terminal berth, harbour, wharf, pier, jetty storage yard, 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.**	• These allowances existed under the Second Schedule that was overhauled by the Tax Laws Amendment Act, 2020. The current Second Schedule does not have these assets among the assets eligible for investment allowances indicating potential drafting errors. • The proposed re-introduction of the allowances is a positive move, which will attract investment in the sector hence cementing Kenya's position as a transit hub for the region.

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Corporate Tax

#	Proposed change	Details	Our comments
12.	Investment allowance on telecommunication equipment	• The Bill proposes to introduce 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 Bill further seeks to expand 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 proposals are aimed at expanding the applicability of investment allowances on telecommunication equipment to, not only cover the cost of the equipment, but also costs incurred on civil works. This move will encourage investment in the telecommunication sector.
13.	Restriction on the 100% accelerated investment allowance	• The Bill proposes to introduce Paragraph 1B in the Income Tax Act’s Second Schedule. The paragraph will restrict the applicability of Paragraph 1A, which 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. • Paragraph 1B will restrict the applicability of the accelerated investment allowance under Paragraph 1A to hotel buildings, buildings used for manufacture and machinery used for manufacture. Further, the 100% investment allowance will not apply to investments which, due to the nature of their business, are located outside Nairobi and Mombasa Counties. **Effective date: 1 January 2024.**	• The proposal aims to limit the scope of investments eligible for accelerated allowances, as was the case in the repealed Second Schedule. • It is to be noted that the Finance Bill 2022 contained similar proposals but the same were not enacted into law. It remains to be seen if Parliament will approve them for assent.

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Corporate Tax

#	Proposed change	Details	Our comments
14.	Clarity on eligibility for Corporation tax rate of fifteen per cent after the initial five years for businesses in the local assembling of motor vehicles.	• The Bill proposes to introduce a definition for the "Local content" threshold required for an extension of the fifteen per cent corporation tax rate for a further five years. • The Bill has defined local content to mean parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya. **Effective date: 1 July 2023**	• The definition clears ambiguity as to what "local content" is while removing any subjectivity as to who qualifies and who does not qualify for the extension. • The proposed change will also work to spur local manufacturing of original motor vehicle parts enhancing availability of quality motor vehicle parts while at the same time create employment.
15.	Introduction of tax for companies undertaking the manufacture of human vaccines	• The Finance Bill proposes to introduce a reduced Corporate Income Tax (CIT) rate of 10% for companies carrying out the business of manufacture of human vaccines. Such entities are currently exempt from any form of income tax (including compensating tax). **Effective date: 1 January 2024.**	• The Finance Act 2022 introduced an income tax exemption on the income of a company manufacturing human vaccines. Although the proposed 10% CIT rate is significantly lower than the normal CIT rate of 30%, investors who might have been encouraged to invest in the sector because of the NIL tax may not take this measure positively. This calls for a National Tax Policy to promote stability in taxation.
16.	Reduction of applicable income tax rate on Monthly Rental Income (MRI)	• The Bill proposes to reduce the MRI tax rate from ten percent to seven-point five percent. **Effective date: 1 January 2024.**	• The reduction of the rate could be aimed at encouraging compliance by residential property owners. • The reduction is a welcome move as it will serve to spur investments in the real estate sector assisting the Government in achieving its goal of affordable housing for citizens.

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Corporate Tax

#	Proposed change	Details	Our comments
17.	Increase in advance tax	• The Bill proposes to increase the rate of advance tax for vans, pick-ups, trucks, prime movers, trailers and lorries from KES 1,500 per tonne of load capacity or KES 2,400 per year, whichever is higher to KES 3,000 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 from KES 60 per passenger capacity per month or KES 2,400 per year, whichever is higher to KES 100 per passenger capacity per month or KES 5,000 per year whichever is higher. **Effective date: 1 January 2024.**	• Although the change could have been driven by the perceived growth in the transport sector and the Government's intention to increase revenue collection from the sector, the increment may be counter-productive with regards to the move to incentivize the local assembling of the motor vehicles, local manufacturing of original motor vehicle parts and the underlying effect of creation of jobs to the citizenry.
18.	Higher threshold for commissioner notification on indirect transfer of interest	• The Bill proposes to amend 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 ten percent to twenty percent. **Effective date: 1 July 2023.**	• This is a welcome move as it serves to curb unnecessary administrative procedures that occur upon change in such ownerships especially if they are regular. • This proposal coincides with the proposed introduction of CGT on indirect transfers of shares or comparable interest in a Kenyan company, with 20% being the threshold for determining the applicability of the CGT.

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Corporate Tax

#	Proposed change	Details	Our comments
19.	Payments from a registered family trust to its beneficiaries to be deemed to have been taxed	• The Bill proposes to delete 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.**	• This proposal is meant to reinstate 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. • The taxation of the income at the level of the Trust reduces the extra withholding tax compliance burden that would apply should subsection 3A of section 11 be retained. • A similar proposal was included in the Finance Bill 2022 but the same was not enacted in the Finance Act 2022.

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Corporate Tax

#	Proposed change	Details	Our comments
20.	Calculation of intellectual property income subject to preferential tax rate	• The Bill seeks to introduce 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 are to be offset against the IP income only. **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. As such, the proposed amendment may not achieve any impact, unless the omissions are addressed before assent.

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Corporate Tax

#	Proposed changes	Details	Our comments
21.	Country-by-country report (CbCR) filing changes	• The Bill seeks to clarify that it is mandatory for an ultimate parent entity (UPE) resident in Kenya of a qualifying Multinational Enterprise group ("MNE") to file a CbC report as per the Finance Act 2022. • 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 95billion (apr. 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 seek to clarify 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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Withholding Tax

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Withholding Tax

We outline the key withholding tax proposals below.

#	Proposed change	Details	Our comments
1.	Introduction of withholding tax (WHT) on payments made in respect of digital content monetization at a rate of 15%	• The Bill proposes to introduce various amendments to the ITA in order to subject payments made in respect of digital content monetisation to withholding tax at a rate of 15% . • 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 proposed 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. • However, we note that the proposed 15% rate is unusually high in comparison with the 5% rate that appears to be the standard withholding tax rate for payments to resident persons. It's our view that the proposed withholding tax should be capped at 5% in tandem with rates applicable on other services provided by resident persons to avoid muzzling growth in this fledgling industry. • 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 for the payer to have a legal basis to deduct tax on them. Although the intention of the proposal is clear, there doesn't seem to be any provision that deems the digital content monetization payments as income accrued in or derived from Kenya. This means there is a lacuna in law if the Bill is passed as is, as payers may not be able to deduct tax. There is need to rectify this error by introducing the payments in Section 10 before assent of the Bill.

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Withholding Tax

#	Proposed change	Details	Our comments
2.	Introduction of withholding tax at 5% on payments made to resident persons or permanent establishments in respect to sales promotions, marketing and advertising services	• The Bill has proposed to amend 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, there is a proposal to extend the WHT deduction on payments to residents in addition to the non-residents, a change that was enacted a few years ago. • The imposition of withholding tax on payments made to residents in relation to sales promotion, marketing, and advertising services 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 promotion, marketing, and advertising services – tax of which shall be considered a credit in computing an impacted taxpayer's annual taxable income. Nonetheless, the proposal will impact service providers in this industry from a cashflow perspective.

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

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Withholding Tax

#	Proposed change	Details	Our comments
3.	Withholding tax to be remitted to the Commissioner within twenty-four hours	• The Bill proposes to amend Section 35 (5) of the Income Tax Act by requiring taxpayers to remit WHT to the Commissioner within twenty-four hours where the tax has been deducted on qualifying payments. • Currently, taxpayers are 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.**	• The introduction of a twenty-hour deadline to remit withholding tax will exert strenuous pressure on taxpayers to meet the expected obligation. Taxpayers will be forced to monitor their transactions on a daily basis, and remit WHT on qualifying transactions. • The compliance cost and administrative burden will increase for both taxpayers and the Kenya Revenue Authority, which contradicts the canon of convenience and economy. Despite the pressing need to urgently collect revenue, the Government's proposal to collect WHT within twenty-four hours is an extreme approach which may be difficult to implement effectively without substantial investment by taxpayers.
4.	Appointed rental agents to remit withholding tax on behalf of property owners	• The Bill proposes to compel property agents who receive and collect rental income on behalf of property owners to remit WHT to the Commissioner within twenty-four hours if they have been appointed to be withholding tax agents. The rental agents will also be expected to file with the Commissioner a return in writing of the tax deducted and any other information required by the Commissioner. • Upon receiving 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 Bill seeks to task 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 proposal seeks to reign in on unscrupulous landlords who fail to comply or where circumstances do not allow the landlords to remit tax directly. • The proposed tax measure may improve revenue collection due to rental agents being empowered to help landlords comply. However, the proposal to remit taxes within twenty-four hours may be a huge burden on rental agents due to the increased administrative burden of daily filings and payments.

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Withholding Tax

#	Proposed change	Details	Our comments
5.	Withholding tax rate on rent to reduce from 10% to 7.5%	• The Bill proposes to amend Section 5 (ja) of the Third Schedule to the Income Tax Act 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 pressure. • 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 the payouts made without deducting the amount staked or wagered	• The Bill has proposed to amend 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 without deducting the amount staked or wagered. • Currently, the term "winnings" is 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 proposed amendment aims to ensure that the withholding tax on winnings, which is currently at 20%, is based on the gross payouts without deduction of the amount staked or wagered. • There have been disputes between the KRA and taxpayers on this matter. The proposal is therefore meant to reduce these disputes and grow tax revenues.

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

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Withholding Tax

#	Proposed change	Details	Our comments
7.	WHT paid on payments non-residents to be forfeited in case of an audit adjustment	• The Bill proposes to introduce a provision in Section 10 of the Income Tax Act that will compel taxpayers to forfeit any WHT paid on a payment for which a subsequent audit adjustment is made. • According to the proposal, 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 proposal will largely affect intragroup service recharges between related parties that 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 are to be exempted from WHT	• The Bill proposes to exempt 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.**	• These proposals aim to 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 to be exempt from WHT	• The Bill proposes to exempt 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 proposal aims to encourage contributions towards a post-retirement medical fund and enhance access to universal health care.

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Digital Asset Tax

The Bill proposes to introduce a new tax known as digital asset tax

#	Proposed change	Details	Our comments
1.	Introduction of digital asset tax	• The Finance Bill proposes to introduce a new tax known as "Digital Asset Tax" on the income derived by a person on transfer or exchange of digital assets. The digital asset tax, is to be introduced through Section 12F of the Income Tax Act and will apply at the rate of 3% on the transfer or exchange value of the digital asset. • The Bill proposes to introduce the following definitions: "Digital asset" includes: 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. "income derived from transfer or exchange of a digital asset" means the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset. • 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. Any non-resident persons who own platforms on which digital assets are exchanged or transferred will be required to register under the simplified tax regime. • Digital asset tax shall be remitted within twenty-four hours 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 January 2024.**	• Taxation of the digital economy is a global topic under the Base Erosion Profit Shifting (BEPS) 2.0 project spearhead by the OECD. There are proposals for a universal unified approach to taxation of the digital economy. • The government has previously captured digital services in the tax net through the digital services tax. This proposal seeks to expand the reach to reap from the increasing prominence and advancement in the digital transactions involving digital assets. • Effectively this move sends indication that Kenya is applying a unilateral approach to taxation of the digital economy contrary to the proposal for the unified approach fronted by OECD under Pillar I and Pillar II proposing a minimum tax of 15% for certain players in the digital economy. This is also contrary to the recent pronouncement by the President during the American Chamber of Commerce Regional Business Summit. • The proposal means additional compliance obligations for the entities involved in facilitating the digital exchange activities across diverse electronic means.

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Capital Gains Tax

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

#	Proposed change	Details	Our comments
1.	Expansion of the scope of CGT to include indirect transfers	• The Bill proposes to amend 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 Bill also proposes to introduce a provision that requires the person transferring 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 proposal is aimed at widening the scope of transactions falling within the ambit of CGT and consequently boost revenue collection against the backdrop of an increase in CGT rate from 5% to 15%, on 1 January 2023.

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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Capital Gains Tax

#	Proposed change	Details	Our comments
2.	Determination of adjusted cost for CGT	• The Bill proposes to amend the Income Tax Act by introducing a new proviso 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. • Under the proposed Paragraph 8(4A) of the Eighth Schedule, where property that was transferred in a transaction that is not subject to capital gains tax, and the property is subsequently transferred in a transaction that is subject to CGT 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.
3.	Due date for the payment of CGT	• The Bill proposes to amend the due date for CGT payment in Paragraph 11A of the Eighth Schedule to the Income Tax Act 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.**	• 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. • The proposed amendment will enable the Government enhance compliance in the collection of CGT by ensuring that it is remitted promptly

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Capital Gains Tax

#	Proposed change	Details	Our comments
4.	CGT exemption on internal restructurings	• The Bill proposes to amend Paragraph 13 of the Eighth Schedule to the Income Tax Act to introduce a provision that will limit the CGT exemption on an internal restructuring to groups that have existed for at least 24 months. **Effective date 1 July 2023**	▪ We believe that the proposal is an anti-tax avoidance provision, which is aimed at countering transactions that may have been designed to benefit from the group CGT relief. ▪ It is hoped that with the proposed amendment, a definition or guidelines on what constitutes "*internal restructure within the Group*" for purposes of CGT exemption would subsequently be provided to avoid any grey areas in the legislation.

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Personal Income Tax

We outline the key proposals that affect personal tax below

<table>
<tr><th>#</th><th>Proposed change</th><th>Details</th><th>Our comments</th></tr>
<tr><td>1.</td><td>Standard mileage rate approved by AA of Kenya to determine non-taxable travel allowances</td><td>• The Bill proposes to amend Section 5(2) of the Income Tax by inserting a new subsection 2(a)(iv)
• The proposal is to limit the tax-free threshold in respect of travelling allowance for employees when out on official duties to the standard mileage rates approved by the Automobile Association of Kenya (AAK).
• Currently, an employee is 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</td><td>• The introduction of AAK rates is a welcome move since it provides some level of uniformity and clarity on taxation of travel allowance. In practice, KRA accepts the use of the AA rates in determining the tax free or reimbursable mileage payments to employees travelling for business purposes.

• However, it is not clear whether this will net in public officers who are also guided by directives from the Salaries & Remuneration Commission (SRC) on the limits of per diems and cash allowances.</td></tr>
<tr><td>2.</td><td>Increase of the marginal tax rate from 30% to 35%</td><td>• The Bill proposes to introduce a new tax band of 35% for incomes in excess of KES 500,000 per month. Below is the proposed tax bands for individuals.
<table><tr><th>Annual tax bands (KES)</th><th>Tax rate</th></tr><tr><td>On the first 288,000</td><td>10%</td></tr><tr><td>On the next 100,000</td><td>25%</td></tr><tr><td>On the next 5,612,000</td><td>30%</td></tr><tr><td>All income over 6,000,000</td><td>35%</td></tr></table>
Effective date: 1 July 2023</td><td>• The proposal embraces one of the canons of taxation which is equity where the high-income earners pay their fair share of tax.

• However, considering the very low numbers of individuals earning more than KES 500,000 per month in Kenya, the negative effects of this proposal such as high earning individuals/employees considering opportunities in other countries with lower tax rates hence likely to lead to talent drain and thus outweigh the incremental revenue collection to be realized.

• This may also lead to undesirable tax refunds where some employees may meet the 35% tax threshold due to one-off payments in some months such as bonuses or commissions.</td></tr>
</table>

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Personal Income Tax

#	Proposed change	Details	Our comments
3.	Deductions to the National Housing Development Fund	• The Bill proposes to amend the Employment Act 2007, to introduce a new contribution to the National Housing Development Fund (NHDF). • Employees are expected to contribute 3% of their monthly basic salary, with the employer matching the contribution. • However, the sum of both contributions has been capped at KES 5,000 per month. **Effective date is 1st July 2023**	• Whereas the goals of increasing savings and investing in affordable housing may be noble, this deduction will increase the burden on employees and employers who are already grappling with increased taxes and statutory deductions like NSSF and NHIF. Coming at a time of rising cost of living and taking into account that a similar proposal was recently shelved, this proposal is unwelcome. • The increased cost of labour may lead to loss of job opportunities as employers minimise their costs or relocate positions that could be transferred to other tax friendly countries. • Furthermore, this proposal raises questions of equity as many employees may already be paying for their mortgages or loans taken to develop housing. In our view this contribution should be voluntary.
4.	Taxation of the benefit from shares allocated in lieu of cash to employees of start-ups to be deferred	• The Bill seeks to introduce a new subsection 7 under Section 5 of the Income Tax Act covering taxation of the benefit from shares issued in lieu of cash to employees of **an eligible start up**. • The proposed changes seek to defer the tax point for such a benefit to **within thirty days** of the earlier of; a) 5 years after the year in which the award is given 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 date of the first event outlined above and where the fair market value cannot be determined, the Commissioner will determine it using the value of shares based on the last issued Financial Statements. • The proposal further defines an eligible start up as a business incorporated in Kenya that:	• 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 facilitate 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 our view, this amendment is likely to boost the manufacturing, agriculture and tech industries which are the most prevalent as start-ups, in line with the government agenda. • Further, this proposal may partially help address the challenge of attracting and retaining of competent staff which is prevalent among startups. • In addition, the restriction on turnover also places a cap on which companies can claim the benefits afforded by the proposed subsection 7 , balancing the need for **companies' liquidity with employee renumeration.**

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Personal Income Tax

#	Proposed change	Details	Our comments
		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 a period of not more than 5 years. **Effective date: 1 July 2023**	• However, it will be useful for the government to reconsider the 5-year period since most start-ups take longer to turn around and may be a challenge for employees who have been granted shares to fund the tax, yet they are not disposing off the shares especially where the enterprise is still not profitable but has a promising future.
5.	Reimbursements to public officers for expenses incurred on official duty to be exempted from tax	• The Bill proposes to amend Section 5(4) of the Income Tax Act by inserting a new provision exempting payments or reimbursements made to public officers for expenses incurred in the performance of official duties from tax, notwithstanding the ownership or control of any assets purchased. • Currently, public officers are subject to the conditions applied to other employees where reimbursements for expenses incurred when preforming official duties should be supported with vouchers or third-party receipts to qualify as business expenses and therefore not taxable on the employee. Typically, the employer has ownership of any assets purchased with company funds in the course of official duty. **Effective date: 1 July 2023**	• This provision may be aimed at cushioning public officers who use their assets such as vehicles, computers and other equipment in the performance of official duties. • However, the proposed amendment in its current form appears to violate the principles of equality and good governance which include accountability. It has the potential for misuse of public funds considering that the emphasis is on accounting for the expense by the public officer without emphasis on ownership of assets purchased hence funds can be diverted to buy private assets. • Our view is that the proposal should be amended to require all the assets purchased in this way to be public goods.

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Personal Income Tax

#	Proposed change	Details	Our comments
6.	Club entrance and subscription fees not taxable on either employer or employee	• The Bill proposes to expressly include club joining and subscription fees as a benefit taxable on the employee, *where the same has been taxed on the employer.* • The Bill further proposes to delete 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 on the employees has been a grey area in the ITA. • Though we believe the intention of the Bill is to tax the employee, if the proposal is enacted as is, the benefit will not be taxable on either the employee or the employer since deletion of Section 16(2)(a)(v) means it cannot be disallowed for corporation. • We expect the above issue to be addressed prior to enactment of the Bill to ensure the expense is allowed for corporation tax and PAYE is borne by the employee.
7.	Post – Retirement Medical fund relief introduced	• The Bill proposes to introduce 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 Bill further proposes to amend 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** whichever is lower. • 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**	• The proposal is welcome as the retirees will also get to benefit from insurance relief where conditions are met. This is especially given that the earning power of a majority of this category would have gone down post-retirement. • In addition, this provision 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. • However, we are of the view considering the high premiums payable for post-retirement medical funds, there is need for the government to consider increasing the proposed relief or exempt from tax lumpsum withdrawals paid directly to a post-retirement medical fund to further cushion the senior citizens

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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Personal Income Tax

#	Proposed change	Details	Our comments
8.	Clean up in the definition of Market Value in relation to shares granted to employees	• The Bill seeks to amend the definition of "market value" in relation to a share granted to an employee by directing that the market value is determined on the date of exercise of the option by the employee. • Presently, 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 January 2024**	• 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 to align the date of determination of the market value of the shares with the tax point which is at exercise.
9.	Mortgage refinance companies now qualifying financial institutions	• The Bill proposes to amend the Fourth Schedule by adding Mortgage refinance companies licensed under the Central Bank of Kenya Act to the list of Financial Institutions. • The Bill also proposes to amend 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 July 2023**	• This is welcome as it expands the scope of institutions individuals can obtain mortgage loans and enjoy the interest deduction benefit. This is also in line with establishment of Kenya Mortgage Refinance Company which is expected to unlock the funding for the affordable housing agenda. • However, a clean-up of the numbering of the financial institutions listed under the fourth schedule is necessary since the current number exceeds 6.

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Personal Income Tax

#	Proposed change	Details	Our comments
10.	Language used for insurance relief made gender-neutral	• The Finance Bill 2023 proposes to amend Section 31(1)(b) of the Income Tax Act by deleting the word “his” and replacing it with “the individual’s”. • The Bill also proposes to amend Section 31(1)(c) by replacing the words “he, as well as his employer” with “the individual and the individual’s employer”. • It should be noted that the Finance Act 2022 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 **Effective date: 1 July 2023**	• These amendments are aimed at providing a more gender – neutral provision that allows all taxpayers to claim insurance relief. The proposed amendments are a clean-up exercise to align the gender language in subsections (b) and (c) to the gender-neutral language in subsection (a).

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VAT

We outline the key VAT proposals below

#	Proposed change	Details	Our comments
1.	Proposal to subject petroleum products to VAT at 16% and to exempt liquefied petroleum gas (LPG)	• The Bill proposes to delete 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. • In addition, the Bill proposes VAT exemption of LPG under Paragraph 153 to the First Schedule of the VAT Act. **Effective date: 1 July 2023**	• The proposal to remove the applicable rate of 8% on petroleum products that are listed under Section B of of Part I of the First Schedule of the VAT Act would render the products subject to VAT at 16%. • On one hand, this proposal will significantly increase the cost of fuel which is an integral commodity in the Kenyan economy. Consequently, the higher cost will result in higher price of goods in the Kenyan market and may negatively impact the cost of living. • On the other hand, the introduction of LPG under the exempt schedule will reduce the cost of cooking gas for Kenyan households, thus reducing the cost of living for the *Mwananchi*.
2.	Proposed exemption of exportation of taxable services from VAT	• The Bill proposes to introduce the exportation of taxable services under paragraph 35 of Part II in the First Schedule (schedule for exempt supplies) to the VAT Act. • Further, the Bill proposes to delete exportation of taxable services in relation to business process outsourcing (BPO) under Paragraph 23 from the Second Schedule (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 Second schedule. • The Bill now seeks to amend the changes made in the 2022 Act and revert the treatment of exported taxable services to the previous exempt treatment. • This change will, expectedly. allow for the services exported out of Kenya to be cheaper but not as competitive as similar services from jurisdictions which treats the services as zero rated. • On the flip side, the proposal also means that entities providing exported services out of Kenya will now not be eligible to claim any input tax relating to these services.

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VAT

#	Proposed change	Details	Our comments
3.	Proposal to exempt Transfer of Business as a Going Concern (TOGC) from VAT	• The Bill proposes to introduce the transfer of business as a going concern under paragraph 36 of the First Schedule of the VAT Act. **Effective date: 1 July 2023**	• The proposal allows for the transfer of business as a going concern to be exempt from VAT. A great move that will entice restructuring transactions. However, the drafters of the Bill should consider providing clarity on what qualifies as TOGC to avert any ambiguity. • It is also notable that this is a reversal of the deletion made through the tax Laws Amendment Act, 2020.
4.	Deductibility of input tax under Section 17	• The Bill proposes to amend the VAT Act to make the conditions applicable for claiming of input tax under Section 17(2) mutually inclusive. • The Bill further proposes to amend Section 17 of the VAT Act introduce a new subsection 9 on the taxability of compensation for the loss of taxable supplies. The Bill proposes 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 proposal to change Section 17(2) will require a VAT registered person to ensure that they have proper documentation and that the sale is declared in the supplier's VAT return. Initially, these two conditions may have been considered mutually exclusive. Should this proposal pass, both conditions ought to be met. • The proposal to include 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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#	Proposed change	Details	Our comments
5.	Keeping of VAT records in Kenya	• The Bill proposes to amend Section 43(1) of the VAT Act to remove the requirement to keep VAT records in Kenya. **Effective date: 1 July 2023**	• The proposal allows for 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).
6.	Clarification on the applicability of place of supply rules for services provided by non-residents	• The Bill proposes to amend Section 8 (2) to delete "not a registered person" include the words "a registered "or unregistered person". **Effective date: 1 July 2023**	• The VAT Act currently provides that the rules to determine the supply of services by non-residents is only applicable on supplies provided to persons not registered for VAT. • This proposal will amend the place of supply rules for supplies made by non-residents persons under Section 8(2) to apply to both a registered "or unregistered person" in Kenya. It ties to the recent move to place both B2B and B2C transactions under the ambit of VAT on digital marketplace supplies.
7.	Proposal to exclude non-residents suppliers of digital marketplace supplies from the VAT registration threshold	• The Bill proposes to amend 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 proposal reiterates the exclusion of persons supplying imported digital market 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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#	Proposed change	Details	Our comments
8.	Correction of the description under Paragraph 20 of Part I of the First Schedule	• New Paragraph 20 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 proposed measure is intended to provide clarity on description of fish exempt under Paragraph 20.
9.	Harmonisation of tariff codes/description to match those in the East African Community Common External Tariff (EAC CET)	• The Bill proposes a clean-up of the tariff numbers and/or the corresponding descriptions of tariff numbers 3003.41, 3003.42, 3003.43, 3003.49, 3003.90, 3005.90 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 Bill proposes further clean-up of the tariff numbers and/or the corresponding descriptions of items falling under 0402.29.10, 3002.19.00, 3003.90.90, 3002.11, 3005.90.10, 3004.90.90, 3003.90.10 and 3003.90. **Effective date: 1 July 2023**	• The proposed measures aim at cleaning up the tariff numbers and corresponding descriptions to match with the current EAC CET.

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#	Proposed change	Details	Our comments
10	Other proposed changes to Part I of the First Schedule	• Paragraph 62 - Exemption of Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks. **Effective date: 1 July 2023**	• The proposed measure severely affects the Tourism sector in the country and negates the efforts by the Government in the recent past to promote tourism in Kenya.
		• Paragraph 63 – Exemption of 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	• The proposed measure 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. Noteworthy, the bed capacity has been increased from fifty under the initial exemption to one hundred.
		• Paragraph 49 exempts aircraft parts of heading 8803, excluding parts of goods of heading 8801. • The Bill proposes to delete the current Paragraph 49 and replace it with one that exempts all goods and parts thereof of chapter 88. **Effective date: 1 July 2023**	• The proposed expanded exemption would cover parts of balloons and dirigibles; gliders, hang gliders and other nonpowered aircraft under 8801 which were previously excluded. It would 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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VAT

#	Proposed change	Details	Our comments
11	Other proposed changes to Part I of the First Schedule	• Paragraph 66A exempts Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel). The Bill proposes to delete this Paragraph. **Effective date: 1 July 2023**	• The proposed measure will result in the subjection of BEV stoves to VAT at 16%.
		• Paragraph 71 exempts Perforated PE film 15-22 gsm of tariff number 3921.90.00. • New Paragraph 71 proposes to exempt 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**	• The proposed measure will result in the clarification of the printed items covered under paragraph 71.
		• Paragraph 107 Plant, machinery and equipment used in the construction of a plastics recycling plant. The Bill proposes to delete this Paragraph. **Effective date: 1 July 2023**	• Plant, machinery and equipment used in the construction of a plastic recycling plant would be taxable at 16% should this proposed change pass into law. • Consequently, it may discourage the investment in the recycling of plastics, a negation from the global trend towards environmental conservation.
		• Paragraph 108 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. The Bill proposes to delete this Paragraph. **Effective date: 1 July 2023**	• This proposed 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.

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VAT

#	Proposed change	Details	Our comments
12	Other proposed changes to Part I of the First Schedule	• Paragraph 119 currently exempts 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. • New Paragraph 119 proposes to exempt 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**	• The proposed 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 CET tariff numbering.
		• Paragraph 120 exempts 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. • New Paragraph 120 Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, and other apparatus, Instruments and appliances of tariff numbers 9018.20.00, 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health. **Effective date: 1 July 2023**	• The proposed measure is will result in the clarification of the electro-diagnostic apparatus items covered under paragraph 120.

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#	Proposed change	Details	Our comments
13	Other proposed changes to Part I of the First Schedule	• Paragraph 122 exempts 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. • New Paragraph 122 proposes to exempt 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**	• The proposed measure will result in the clarification of the instruments and appliances covered under paragraph 122
		• Paragraph 125 Artificial teeth and dental fittings of tariff numbers 9021.21.00, 9021.29.00 and artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health. • New Paragraph 125 Artificial teeth of tariff number 9021.21.00, other dental fittings of tariff number 9021.29.00 and other artificial parts of the body of tariff numbers 9021.31.00 and 9021.39.00 and other appliances of tariff number 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health. **Effective date: 1 July 2023**	• The proposed 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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#	Proposed change	Details	Our comments
14	Other proposed changes to Part I of the First Schedule	• Paragraph 128 currently exempts 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. • New Paragraph 128 seeks to exempt 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 Secretar responsible for matters relating to health. **Effective date: 1 July 2023**	• The proposed 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 current Paragraph which only covers tariff number 8523.80.10
		• Paragraph 129 exempts 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. • New Paragraph 129 Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.10.00 purchased or imported by registered hospitals upon approval by the Cabinet Secretary responsible for matters relating to health. **Effective date: 1 July 2023**	• The proposed 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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#	Proposed change	Details	Our comments
15	Other proposed changes to Part I of the First Schedule	• Paragraph 130 exempts 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 Bill proposes to delete this Paragraph. **Effective date: 1 July 2023**	• The proposed 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 Bill amends Paragraph 140 to include plant and machinery purchased locally. **Effective date: 1 July 2023**	• The proposed change will encourage the investors or manufacturers of pharmaceutical products to purchase relevant plant and machinery locally.
		• Paragraph 146 exempts such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector. Provided that the value of such investment is not less than two billion shillings. The Bill proposes to delete this Paragraph. **Effective date: 1 July 2023**	• The deletion removes the arbitrary powers of the Cabinet Secretary to grant exemption on investments in the manufacturing sector.

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#	Proposed change	Details	Our comments
16	Other proposed changes to Part I of the First Schedule	• Proposed introduction of Paragraph 147 to exempt inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health. **Effective date: 1 July 2023**	• The proposed change will encourage the investors or manufacturers of medicaments to purchase goods to invest in the sector. It will also increase purchase of locally produced inputs further promoting growth in the economy.
		• Introduction of Paragraph 148 to exempt all inputs and raw materials, whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary responsible for matters relating to agriculture. • The Bill further proposes to delete these items from the zero-rating schedule. **Effective date: 1 July 2023**	• The move from zero-rating to exemption would mean that businesses bear the incidence of VAT incurred on taxable supplies that such businesses acquire for production purposes. Such VAT would expectedly result in higher business costs and, perhaps, a proportionate increment in the prices of pest control products. • From a Government viewpoint, exemption reduces cases of refunds occasioned by zero-rating.

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#	Proposed change	Details	Our comments
17	Other proposed changes to Part I of the First Schedule	• Paragraph 149 proposes to exempt agricultural pest control products. The Bill further proposes to delete these items from the zero-rating schedule. **Effective date: 1 July 2023**	• The move from zero-rating to exemption would mean that businesses bear the incidence of VAT incurred on taxable supplies that such businesses acquire. Such VAT would expectedly result in higher business costs and, perhaps, a proportionate increment in the prices of pest control products. • From a Government viewpoint, exemption reduces cases of refunds occasioned by zero-rating.
		• Paragraph 150 proposes to exempt transportation of sugarcane from farms to milling factories. The same has been deleted from the zero-rating Schedule of the VAT Act. **Effective date: 1 July 2023**	• Exemption would make it more affordable for farmers as they would not bear the incidence of VAT. However, due regard ought to be had on the impact of exemption on the transporters in respect of non-deductibility on input tax occasioned by the exemption.
		• Paragraph 151 proposes to exempt Fertilizers of Chapter 31. The Bill further proposes to deleted fertilizers from the zero-rating Schedule. • A similar proposal is made in respect of inputs and raw materials locally acquired or imported by manufacturers of fertilizer under Paragraph 152. **Effective date: 1 July 2023**	• Consideration must be had to the impact of exemption when compared to zero-rating. The absorption of non-deductible VAT by sellers of fertilizer has the potential to make it more expensive when compared to zero-rating. On the flipside, the government will reduce cases of VAT refunds that would otherwise be occasioned by zero-rating.

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VAT

#	Proposed change	Details	Our comments
18	Other proposed changes to Part I of the First Schedule	• Paragraph 154 proposes to exempt all tea sold for the purpose of value addition before exportation subject to approval by the Commissioner of Customs. **Effective date: 1 July 2023**	• The proposed change is informed by the Government's push for the tea industry to add value to the tea harvested in Kenya prior to exportation. Expectedly, this will result in the tea fetching higher prices thus increasing the earnings from tea sold. • This will also contribute to a reduction in the trade deficit and contribute to the stabilization of foreign exchange.
19	Proposed changes to Part II of the First Schedule	• Paragraph 27 of the exemption Schedule, under Part II, exempts taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon recommendation by the Cabinet Secretary responsible for health, who shall issue guidelines for the criteria to determine the eligibility for the exemption. • Deletion of Paragraph 27 and Introduction of new Paragraph 27A to permit the continuance of exemptions already granted under Paragraph 27 until the approved supply is made in full. **Effective date: 1 July 2023**	• The proposed change reverses the gain made towards the reduction of cost in the construction of hospital facilities. The change will result in the services being subject to VAT at 16%. • Any exemptions issued prior to the proposed change will be in force until completion of the supply.

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VAT

#	Proposed change	Details	Our comments
20	Proposed 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. • Amendment of Paragraph 34 to include taxable services. **Effective date: 1 July 2023**	• The proposed change ensures that all inputs, both goods and services, directed to special government projects and the manufacturing of human vaccines are all exempt for VAT purposes. Noteworthy, taxable goods acquired under the special operating framework arrangement referred to in Paragraph 34 are still exempt under Paragraph 145 of Part I (exempt goods) of the First Schedule.
21	Proposed changes to Part A of the Second Schedule	• Paragraph 11 exempts inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved from time to time by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health. The Bill proposes to delete this Paragraph. **Effective date: 1 July 2023**	• The proposed change reverses the efforts made towards the reduction of cost in the construction of hospital facilities effected by the Government previously. The change will result in the services to be subjected to VAT at 16%.

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VAT

#	Proposed change	Details	Our comments
22	Proposed changes to part A of the Second Schedule	• Paragraph 20 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. • Provided this paragraph shall be in operation for a period of six months from the date of assent. **Effective date: 1 July 2023**	• The proposed 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.
21	Proposed changes to part A of the Second Schedule	• Introduction of Paragraph 26 covering Inbound international sea freight offered by a registered person. **Effective date: 1 July 2023**	• The proposed change comes following various debates on the taxability of freight services relating to imported goods under Section 14 of the VAT Act. • The proposal ensures that where the supplier of the international sea freight is a registered person they will charge VAT at 0%. 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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Excise Duty

We outline the key Excise Duty proposals below.

#	Proposed change	Details	Our comments
1.	Repeal of inflationary adjustment of excise duty rates.	• The Bill proposes to repeal Section 10 of the EDA which provides for annual inflationary adjustment of specific rates of excise duty. • Section 10 of the EDA empowers 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. • Inflationary adjustment of excise duty was introduced on 1 December 2015 on enactment of the EDA. **Effective date: 1 July 2023.**	• The CG has been increasing excise duty on all products attracting specific rates by the average inflation rate (ranging between 5.2% and 6.3%) annually since August 2018. In addition, the CS has increased excise duty on some excisable goods by up to 20% in accordance with Section 8 of EDA. • The annual increase of excise duty on excisable goods has resulted to 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. • The proposal to remove inflationary adjustment of excise duty is therefore a welcome move that will protect affected local manufactures, 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 and 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 proposal to repeal of the inflationary adjustment provision.

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

#	Proposed change	Details	Our comments
2.	Excise stamps offenses	• The Bill proposes to repeal Section 40 of the EDA which states that contravention of Section 28 of the EDA on excise stamps is an offense. Section 28 of the EDA requires the CS to publish regulations to govern affixation of excise stamps on excisable goods and prohibits removal of excisable goods from a place designated for affixation of excise stamps if the goods have not been affixed with stamps. • The Bill proposes to amend Section 28 of the EDA to specify various offenses in relation to excise stamps by introducing the following Paragraph: • A person commits an offence if that person— a) defaces or prints over an excise stamp affixed on any excisable goods or package; b) is in possession of excisable goods on which excise stamps have not been affixed in accordance with the Excisable Goods Management System Regulations (EGMS Regulations); c) acquires or attempts to acquire an excise stamp without the authority of the Commissioner; d) prints, counterfeits, makes or in any way creates an excise stamp without the authority of the Commissioner; e) is in possession of an excise stamp which has been printed, made or in any way acquired without the authority of the Commissioner; f) is in possession of, conveys, distributes, sells, offers for sale or trades in excisable goods without affixing excise stamps in accordance with the EDA and EGMS Regulations; or g) is in possession of, conveys, distributes, sells, or trades in excisable goods which have been affixed with counterfeit excise stamps. Further, the Bill proposes a fine not exceeding five million shillings or imprisonment for a term not exceeding three years, or to both on persons who are convicted on the foregoing offences. **Effective date: 1 July 2023**	• Section 28 and 40 of the EDA as currently drafted do not specify which acts or omissions amount to an offense for manufacturers, importers and distributors of excisable goods which require stamp affixation. • The proposed 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 proposed amendment is aimed at enforcing compliance by local manufacturers and importers of excisable goods with the excise duty laws and regulations.

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Excise Duty

#	Proposed change	Details	Our comments
3.	Payment of excise duty on betting and gaming within twenty-four hours	• The Bill proposes to introduce a requirement for bookmakers to remit excise duty on betting and gaming offered through a platform or other medium to the Commissioner within twenty-four hours from the closure of transactions of the day under Section 36A of EDA. • The Bill clarifies that "closure of transactions of the day" means midnight of that day. • Further, the Bill proposes to empower the CG to require taxpayers in any sector to remit excise duty collected on certain excisable services within twenty-four hours from the closure of transactions of the day. **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 including 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. • In our view, the proposed measure is aimed at promoting tax compliance in the betting industry and improving Government's cashflow. • This proposal if adopted 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 proposal to empower the CG to require them to remit excise duty within 24 hours is adopted.
4.	Clarification on the definition of the amount wagered or staked	• The Bill proposes to amend 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 proposed 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 proposal is aimed at providing clarity on the taxable value in a gaming transaction.

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Excise Duty

#	Proposed change	Details	Our comments
5	Introduction of excise duty on various goods and services	• The Bill proposes to introduce excise duty on the following goods and services: a) Locally manufactured sugar confectionary of Tariff Heading 1704 at KES 42.91 per kg b) 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% c) Imported fish at KES 100,000 per metric tonne or 20%, whichever is higher d) Powdered juice at KES 25 per kg e) Sugar excluding sugar imported or locally purchased by a registered pharmaceutical manufacturer at KES 5 per kg f) Human hair and other products of Tariff Heading 6703 at 5% g) Wigs, false beards, eyebrows and eyelashes, switches and the like, and other products of Tariff Heading 6704 at 5% h) Artificial nails of Tariff Code 3926.90.90 at 5% i) Imported cement at 10% of the value or KES 1.50 per kg, whichever is higher j) Imported furniture excluding furniture originating from East African Community (EAC) Partner States that meet the East African Community Rules of Origin at 30% k) Imported paints, varnishes and lacquers of Tariff Heading 3208, 3209 and 3210 at 15% l) Imported test liner of Tariff Code 4805.24.00 at 25% m) Imported fluting medium of Tariff Code 4805.19.00 at 25% n) 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 Bill proposes to introduce excise duty on certain imported goods e.g. fish, cement, paints, varnishes, lacquers, test liners 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 proposal, if adopted, 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 introduction of excise duty on beauty products such as wigs, human hair, artificial nails, eyebrows etc. is aligned with the Government policy of imposing excise duty on luxurious products and is aimed at primarily generating additional revenue for the Government. • The Bill proposes to reintroduce 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. • Last year the Government had proposed to introduce excise duty on fees charged on advertisement through the Finance Bill 2021 but this proposal was dropped by the National Assembly after public participation. It remains to be seen whether the proposal will be adopted on second attempt.

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Excise Duty

#	Proposed change	Details	Our comments
6	Reduction of excise duty on various services	• The Bill proposes to amend Part II, First Schedule to the Excise Duty Act by reducing the excise duty rate 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 proposal 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.
7	Increase of excise duty rates on various services	• The Bill proposes to amend Part II, First Schedule to the Excise Duty Act by increasing the excise duty rate on various services as follows: a) 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% b) Betting (excluding horse racing), gaming, price competition and lottery (excluding charitable lotteries) from 7.5% to 20%. **Effective date: 1 July 2023**	• In 2019, the Government introduced excise duty on betting to curb the negative social effects caused by betting particularly amongst the youth. However, the Finance Act 2020 removed excise duty on betting activities following lobbying by betting companies to the National Assembly . • Excise duty on betting was reintroduced vide Finance Act 2021 at the rate of 7.5% effective 1 July 2021. • The reintroduction of excise duty on betting coupled with other tax measures on betting have in the recent past contributed to the exit of some key players from the Kenyan market. • The Bill is seeking to increase the rate of excise duty on betting (excluding horse racing), gaming, price competition and lottery (excluding charitable lotteries) to 20% to further discourage this vice and generate additional revenue for the Government. • The continued increase of excise duty on betting, gaming, price competition and lottery by the Government will ultimately lead to the exit of more players from the Kenyan market and discourage further investment in the industry.

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Excise Duty

#	Proposed change	Details	Our Comments
8	Removal of excise duty on certain goods	• The Bill proposes to remove 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 3923.90.90. **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 proposal, if adopted, will reduce the cost of manufacturing the affected plastic articles and protect local manufactures from competition arising from cheaper plastic articles.
9	Amendment of excise duty on chocolate	• The Bill proposes to amend 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; 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**	• The First Schedule of the EDA as currently drafted is 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 is subject to excise duty. Further, the First schedule of the EDA limits the scope of chocolates subject to excise duty to those in the form of blocks, slabs or bars. Whereas certain food preparations containing cocoa are classified under tariff codes 1806.31.00, 1806.32.00, and 1806.90.00, they are currently not subject to excise duty due to the above-mentioned limitation. • The proposed change seeks to clarify that white chocolate of Tariff Heading 1704 is subject to excise duty. This proposal also seeks to expand the scope of products of Tariff Codes 1806.31.00, 1806.32.00, and 1806.90.00 subject to excise duty to include other food preparations.

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Excise Duty

#	Proposed change	Details	Our comments
10.	Amendment of excisable fees charged by digital lenders	• The Bill proposes to amend Part II, Paragraph 7 of the First Schedule of the EDA by replacing *“fees”* with *“any amount charged in respect of lending”* to read as follows: *“Excise duty on any amount charged in respect of lending charged by digital lenders at a rate of twenty percent”* **Effective date: 1 July 2023**	• The Finance Act 2022 introduced excise duty on fees charged by digital lenders at 20% but did not define the scope of fees subject to excise duty. • The absence of a definition of “fees” and “digital lenders” in the EDA created ambiguity on the scope of fees subject to excise duty. The term fees is currently interpreted by the KRA to include any amount charged digital lenders. The Bill seeks to clarify that any amount charged by digital lenders in respect of lending will be subject to excise duty and cures the current ambiguity in law to encourage compliance by the affected digital lenders. • The imposition of excise duty on interest charged by digital lenders contradicts the approach taken on core incomes of financial institutions such as interest for banks, premiums for insurers and premium based commissions for insurance brokers where these incomes are exempted from excise duty.
11.	Clarification on the definition of excise control	• The Bill proposes to amend Section 2 of the Excise Duty Act, 2015 (EDA) to read as follows: *“excise control” has the meaning assigned to it in section 24”* • Section 2 of the EDA currently defines 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. **Effective date: 1st July 2023**	• The proposed amendment 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.

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

#	Proposed change	Details	Our comments
12.	Amendment of the definition of other fees	• The Bill proposes to amend the definition of other fees by deleting the words *"relating to their licensed activities"* to read as follows: *"other fees" includes any fees, charges or commissions charged by financial institutions, but does not include interest on loan or return on loan; or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder.* **Effective date: 1 July 2023.**	• The deletion of the phrase "relating to their licensed activities" from the definition of other fees will expand the scope of other fees subject to excise duty to include any fees, charges or commissions charged by financial institutions (excluding interest or return loan). • As currently drafted, the EDA limits the scope of other fees subject to excise duty to those relating to activities licensed under the Banking Act, Insurance act, Central Bank of Kenya Act, Microfinance Act and Sacco Societies Act. • This proposal will bring into the ambit of excise duty fees charged by financial institutions on services not required to be licensed under the foregoing acts including management services, marketing services, revenue collection agency services etc.
13.	Suspension of excise duty license	• The Bill proposes to amend Section 20(5b) of the EDA to require the Commissioner to provide a licensee who has appealed suspension of a license with a minimum period of 14 days to remedy the deficiencies that led to the suspension of the license. **Effective date: 1 July 2023**	• The proposed change will require the Commissioner to allow persons who have been issued with a notice of suspension a period of at least 14 days to remedy the deficiencies that led to the suspension. • This is a welcome move that will ensure certainty and fairness amongst licensees who appeal suspension of a license by the Commissioner.

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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Miscellaneous Fees and Levies

We outline the key Miscellaneous Fees and Levies proposals below

#	Proposed change	Details	Our comments
1.	Reduction of Import Declaration Fee (IDF) and Railway Development Levy (RDL) rates.	• The Bill proposes to amend 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. • The Bill also proposes to delete 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**	• This is a welcome proposal that if adopted 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 against the dollar and other externalities. • However, the proposed deletion of 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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Miscellaneous Fees and Levies

#	Proposed change	Details	Our comments
2.	Introduction of export and investment promotion levy (EIPL)	• The Bill proposes to introduce a new levy to be known as export and investment promotion levy that will be imposed on specified goods listed in the proposed Third Schedule of the MFLA when imported into Kenya for home use. The proposed list of goods that will be subject to EIPL include paper and paperboard products, iron and steel products and cement clinker. The detailed list under the Third Schedule is enclosed in the table below. • However, the Bill proposes to exempt goods originating from the EAC Partner States in accordance with the EAC Rules of Origin from EIPL. • The Bill proposes to establish a fund where collected EIPL will be paid to in accordance with the Public Finance Management Act, 2012. • The purpose of the levy will be to provide funds to boost manufacturing, increase exports, create jobs, save on foreign exchange and promote investments. **Effective date: 1 September 2023.**	• The proposal to introduce 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 Bill 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 Bill proposes to further increase the cost of importing the foregoing products to further promote local manufacturing of these products. • This proposal if not properly implemented may increase cost of procuring the affected products in the Kenyan market particularly if the local production capacity is insufficient.

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Miscellaneous Fees and Levies

Third Schedule

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

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Miscellaneous Fees and Levies

#	Proposed change	Details	Our comments
3.	Reduction of export levy rate on raw hides and skins	• The Bill proposes to reduce export levy on various raw hides and skins from 80% or USD 0.52 per Kg to 50% or USD 0.32 per Kg whichever is higher as shown in the table below: **Effective date: 1 July 2023.**	• 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 proposal 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. • We note that a similar proposal vide the Finance Bill 2022 was not adopted by the National Assembly.

Tariff No.	Tariff description	Current Export Levy Rate	Proposed Export Levy Rate
4101.20.00	Whole unsplit hides and skins, of a weight per skin not exceeding 8 kg. when simply dried, 10 kg. when dry salted, or 16 kg. when fresh, wet salted or otherwise preserved	80% or USD 0.52 per kg whichever is higher	50% or USD 0.32 whichever is higher
4102.21.00	Raw skins of sheep or lambs (pickled, but not tanned, parchment-dressed or further prepared), without wool on whether or not split, other than those excluded by Note 1(c) to Chapter 41.	80% or USD 0.52 per kg whichever is higher	50% or USD 0.32 whichever is higher
4102.29.00	Other raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), without wool on, whether or not split, other than those excluded by Note (c) to Chapter 41	80% or USD 0.52 per kg whichever is higher	50% or USD 0.32 whichever is higher
4103.20.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or (c) to this Chapter, of reptiles.	80% or USD 0.52 per kg	50% or USD 0.32 whichever is higher
4103.30.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment dressed or further prepared), but not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter, of swine.	80% or USD 0.52 per kg	50% or USD 0.32 whichever is higher

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Miscellaneous Fees and Levies

Tariff No.	Tariff description	Current Export Levy Rate	Proposed Export Levy Rate
4103.90.00	Other raw hides and skins other than of reptiles, swine, goats or kids.	80% or USD 0.52 per kg	50% or USD 0.32 whichever is higher
4104.19.00	Other tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared, in the wet state (including wet - blue).	80% or USD 0.52 per kg	50% or USD 0.32 whichever is higher
4101.50.00	Whole hides and skins, of weight exceeding 16 kg	80% or USD 0.52 per kg	50% or USD 0.32 whichever is higher
4101 .90.00	Other, including butts, bends and bellies.	80% or USD 0.52 per kg	50% or USD 0.32 whichever is higher
4102.10.00	Raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment dressed or further prepared), with wool or, whether or not split, other than those excluded by Note 1(c) to Chapter 41.	80% or USD 0.52 per kg	50% or USD 0.32 whichever is higher
4301.10.00	Raw furskins of mink, whole, with or without head, tail or paws.	80% or USD 0.52 per kg	50% or USD 0.32 whichever is higher
4301.80.00	Other raw furskins, whole, with or without head, tail or paws.	80% or USD 0.52 per kg	50% or USD 0.32 whichever is higher
4301.90.00	Heads, tail, paws and other pieces or cuttings, suitable for furriers' use.	80% or USD 0.52 per kg	50% or USD 0.32 whichever is higher
4302.11.00	Whole skins, with or without head, tail or paws, not assembled, of mink.	80% or USD 0.52 per kg	50% or USD 0.32 whichever is higher
4302.19.00	Other whole skins, with or without head, tail or paws, not assembled.	80% or USD 0.52 per kg	50% or USD 0.32 whichever is higher
4302.20.00	Heads, tails, paws and other pieces or cuttings, not assembled.	80% or USD 0.52 per kg	50% or USD 0.32 whichever is higher

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Miscellaneous Fees and Levies

#	Proposed change	Details	Our comments
4.	Introduction of export levy duty on various products	• The Bill proposes to amend Part I of the First Schedule to the MFLA by introducing export levy on the following products at a rate of 20% of the customs value: a) Cobalt mattes and other intermediate products of cobalt metallurgy; cobalt and articles thereof, including waste and scrap of Tariff Heading 8105 b) Other waste and scrap of Tariff Code 8109.39.00 c) Molasses resulting from the extraction or refining of sugar of Tariff Heading 1703 **Effective date: 1 July 2023**	• The introduction of export levy on the specified products is perhaps geared towards discouraging the exportation of these products. The move will seek to protect local manufacturers who procure these products from competition in the export market.

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Miscellaneous Fees and Levies

We outline the key Miscellaneous Fees and Levies proposals below

#	Proposed change	Details	Our comments
5.	Alignment of product descriptions and tariff codes specified in the First Schedule of the MFLA	• The Bill proposes to amend 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) **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 proposed changes are aimed at correcting the foregoing errors and aligning the Tariff and product description with the EACCET.

Current Tariff Code	Current product description	Proposed Tariff Code	Proposed 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

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Miscellaneous Fees and Levies

We outline the key Miscellaneous Fees and Levies proposals below

Current Tariff Code	Current product description	Proposed Tariff Code	Proposed product description
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
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

#	Proposed change	Details	Our comments
6.	Amendment of IDF and RDL exemption schedule under the Second Schedule of the MFLA	• The Bill proposes to amend 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 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 **Effective date: 1 July 2023**	• The proposal 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 Bill also proposes to exempt all aircrafts and spare parts in a bid to reduce operational costs of local airlines in a bid to improve profitability of the airlines. • The proposal to amend RDL and IDF exemption provisions on 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

We outline the key Tax Administration proposals below

#	Proposed change	Details	Our comments
1.	Deposit of security before appealing against a judgement of the TAT to the High Court	• The Bill seeks to amend Section 32 of the TAT Act to provide that taxpayers aggrieved by the TAT's decision should 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. • Should the High Court rule in favour of the taxpayer, the Commissioner shall refund the amount within thirty (30) days of the matter's determination. **Effective date: 1 July 2023**	• The proposed amendment is a slight alteration of a proposal contained in the Finance Bill, 2022, which was eventually dropped in the Finance Act, 2022. The proposal amounts to a punitive departure from established practice, where taxpayers are only required to pay the amount not in dispute. • If enacted, the current proposal will have adverse implications on taxpayers' rights to access to justice and fair administrative action, since not all affected taxpayers may have the cashflows necessary to pay 20% of the disputed tax or obtain security for the same. This is especially pertinent where the tax assessed or in dispute is astronomical. • The proposed amendment will also be manifestly unfair to taxpayers as they will be required to deposit sums of money in dispute with the Commissioner, who also happens to be the adversarial party in tax disputes. In practice, where the High Court determines that security is required, the same is usually given or paid to the court and not to one of the parties to a dispute. • The proposal will further unduly limit the High Court's discretion to determine whether security is required on a case-by-case basis. • In countries where this measure has been implemented in one form or another, it has been generally abused by some revenue authorities through issuance of inflated assessments to trigger significant payments by taxpayers.

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Tax Administration

#	Proposed change	Details	Our comments
2.	Tax amnesty	• The Bill proposes to introduce a new Section 37E into the TPA, to provide for an amnesty of interest, penalties or fines on unpaid tax for taxpayers. • To qualify for the amnesty, the Bill proposes the following requirements: - The amnesty will apply for unpaid taxes that were due before 31 December 2022, and a 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. • The Bill further proposes a general amnesty of interest, penalties or fines on unpaid tax for all taxpayers where the underlying principal tax had been paid before 31 December 2022. **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. If enacted into law, we expect the amnesty to improve revenue collection in the short term and tax compliance going forward. • Further, should this proposal be enacted into law, taxpayers are advised to review their tax affairs to take early advantage of the amnesty. • The proposal to provide a 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, one that also provides taxpayers the opportunity to review and clean up their iTax ledgers to eliminate the interest and penalties covered in the general amnesty.
3.	Security for unpaid taxes	• The Bill proposes to amend Section 40 of the TPA, which empowers the Commissioner to utilize a taxpayer's property as security for any unpaid taxes. • The proposed amendment provides 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. **Effective date: 1 July 2023**	• The proposed amendment seeks to shift the requirement to notify a taxpayer that their property will be used as security to **after** the actual registration of the security. This is in contrast to the current position where a taxpayer ought to be notified before the registration of the security. • In effect, the proposed amendment will empower 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 may be prone to abuse and may infringe upon taxpayers' rights to fair administrative action, property and access to justice.

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Tax Administration

#	Proposed change	Details	Our comments
4.	Amendment of assessments	• The Bill proposes to amend Section 31 of the TPA to delete the phrase “original assessments” and replace therefor the word “assessment”. **Effective date: 1 July 2023**	• The proposed amendment is aimed at clarifying 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 Bill proposes to repeal Sections 37 and 89(6) to 89(8) from the TPA. Currently, the provisions allow the Commissioner to abandon taxes, with the Cabinet Secretary’s approval, where it is impossible to recover an unpaid tax due to undue expense, difficulty or inequity in recovering the tax, or any other reasonable grounds. • The provisions also empower 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 proposed amendments aim to eliminate 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. • Notwithstanding the proposal’s intent, there is a real risk of placing taxpayers with genuine cases which would warrant tax reliefs at a disadvantage. Such cases include, for instance, the erroneous imposition of tax, penalties or interest due to a change in law or technological hitches on the KRA’s systems like iTax. With the proposed abolition of these reliefs, it appears like such taxpayers will be required to pay the taxes, penalties or interest due, or otherwise engage in lengthy and costly tax controversies to contest the same.

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Tax Administration

#	Proposed change	Details	Our comments
6.	Agency notices to be issued under additional circumstances	• The Bill proposes to amend Section 42 of the TPA, which empowers the Commissioner to issue agency notices to a taxpayer's bankers or debtors where there are unpaid taxes. • Specifically, the Bill provides that the Commissioner cannot issue an agency notice unless: - The taxpayer has defaulted in paying an instalment under an agreed payment plan with the KRA. - The Commissioner has raised an assessment and the taxpayer has not objected to the assessment within 30 days. - The taxpayer has not appealed against an objection decision within 30 days. - The taxpayer has not appealed a decision of the TAT or court which is in the KRA's favour. - The taxpayer has filed a return but has not paid the taxes by the due date. **Effective date: 1 July 2023**	• This is a welcome move as it seeks to clarify the circumstances under which the Commissioner can issue an agency notice. The Bill seeks to expand the scope of circumstances

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Tax Administration

#	Proposed change	Details	Our comments
7.	Record keeping requirements for resident trustees	• The Bill proposes to amend 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 proposed amendments, if enacted, will obligate all resident trustees to maintain records of the trusts they administer and to produce the same for inspection if so required. • The proposal 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.
8.	All taxpayers to be required to issue electronic tax invoices	• The Bill proposes to introduce a new Section 23A into the TPA, to empower the Commissioner to establish an electronic system for the issuance of electronic tax invoices. • The proposal 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, if enacted, the proposed amendment will require all invoices required to ascertain the tax liability of residents or permanent establishments ("PEs") of non-residents to be issued via the electronic system. • The proposal further provides that the Commissioner may, by notice in the Gazette, exempt a person from these requirements. • The above requirements, however, will not cover employers, importers and taxpayers making interest payments. A tax invoice will also not be required for investment allowance purposes. **Effective date: 1 September 2023**	• The Bill proposes to codify 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 recently launched e-TIMS. Presently, such requirements are contained in the VAT Act and the regulations made thereunder, with the implication that only VAT-registered taxpayers are required to issue electronic tax invoices. • However, with the intended codification of this requirement within the TPA, the proposed 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 • The proposal will likely result in increased and undue compliance costs, especially for SMEs and non-VAT registered taxpayers.

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Tax Administration

#	Proposed change	Details	Our comments
9.	Withholding VAT to be remitted within 3 days	• The Bill proposes to amend Section 42A of the TPA to delete the exemption of registered manufacturers with an investment value exceeding KES 3 billion from withholding VAT requirements. • The Bill further amends the provision to require withholding VAT agents to remit withholding VAT to the KRA within 3 days after the deduction is made. **Effective date: 1 July 2023**	• Currently, withholding VAT agents are required to remit the tax not later than the 20th day of the month following when the deduction is made. This requirement may make compliance for withholding VAT agents easier, as the deadlines are aligned to those of other taxes, including VAT, withholding tax and excise duty. • The proposed amendment is likely aimed at meeting the Government's immediate revenue or expenditure cashflow requirements. However, remitting withholding VAT within 3 days will impose an unreasonable compliance burden on the affected taxpayers.
10.	Codification of rental income tax agents	• The Bill proposes to amend the TPA by introducing Section 42C which will provide for the appointment of agents for the collection and remittance of rental income tax. **Effective date: 1 July 2023**	• The proposed amendment is a welcome move which will codify in law the appointment of rental income tax agents. Presently, while the KRA still appoints some taxpayers as rental income tax agents, the process is not provided for in law.

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Tax Administration

#	Proposed change	Details	Our comments
11.	Refund or offset of overpaid tax.	• The Bill proposes to amend Section 47 of the TPA to allow taxpayers to apply for the offset of overpaid tax against their outstanding tax debts, which application should be determined within 90 days. Currently, the law only allows taxpayers to apply for an offset against future tax liabilities. • The Bill further proposes to amend 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 application upon approval. If not repaid within 6 months, the refund shall be used to offset the taxpayer's outstanding or future tax liabilities. • In addition, the Bill proposes to introduce 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 proposed changes are progressive and provide a welcome relief for taxpayers, as they would allow taxpayers to offset tax overpayments against past, current and future tax liabilities. Presently, a taxpayer can only apply to offset tax overpayments against future liabilities. • If enacted, the proposals 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 (currently 90 days, or the proposed 120 days where the application is audited). • Further, by providing that approved refunds shall be repaid to taxpayers within 6 months, rather than the current two years, the proposed amendments will enhance efficiency in the processing of refunds and help taxpayers access the funds sooner, which funds can be channeled towards more beneficial and income-generating uses.

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Tax Administration

#	Proposed change	Details	Our comments
12.	Objections	• The Bill seeks to amend 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 proposed 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 proposal will afford taxpayers an opportunity to remedy otherwise invalid objections. • The proposal will also introduce the certainty that the issuance of an invalidation notice does not negate the Commissioner's obligation to issue an objection decision. This is a gap in existing legislation where objection decisions are not issued where a taxpayer fails to cure an invalidation notice, which has led to taxpayers treating invalidation notices as objection decisions and appealing against the same.

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Tax Administration

#	Proposed change	Details	Our comments
13.	Procedure for appeal before the TAT	• The Bill proposes to amend Section 13 of the Tax Appeals Tribunal Act ("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 be required to submit: - The appealable decision; and - Such other documents as may be necessary to enable the TAT to make a decision. • The Bill further clarifies that "appealable decision" shall have the meaning assigned to it under the Tax Procedures Act, 2015 ("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 proposed amendment is a clean-up exercise to harmonize the TPA and the TAT Act with respect to the jurisdiction and practice before the TAT. As currently drafted, the TAT Act requires the taxpayer to attach the "tax decision" in their appeal. However, the TPA is emphatic that only appealable decisions (such as objection decisions), and not tax decisions (such as assessments) can be contested before the TAT. Consequently, most taxpayers in practice attach the appealable decisions to their appeals, rather than the tax decisions. The proposed amendment will thus align the TAT Act and the TPA 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 proposal is to confirm that taxpayers ought to submit the evidence they seek to rely upon in an appeal together with their appeal papers.

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Tax Administration

#	Proposed change	Details	Our comments
14.	Refund decisions to be challenged directly before the TAT	• The Bill proposes to amend Section 3 of the TPA to eliminate “refund decisions” from the scope of tax decisions. • The Bill further amends the section to include a demand for late payment interest as a tax decision. **Effective date: 1 July 2023**	• The proposed amendment seeks to cure an existing ambiguity in the TPA concerning refund decisions. Specifically, the Finance Act, 2022 amended Section 47(13) of the TPA to allow taxpayers to contest refund decisions before the TAT. However, refund decisions were still retained as “tax decisions”, which can only be first challenged through the objection process. With the current proposed amendment, the Bill aims to clarify that refund decisions are “appealable decisions”, which taxpayers can only challenge by first going to the TAT. • That said, the conversion of refund decisions from tax to appealable decisions would limit the number of avenues available to taxpayers to challenge unfavorable refund decisions. It might also pose an administrative challenge to both taxpayers and the TAT, especially given the multitude of potential refund decisions for transactional taxes like VAT, where multiple refund decisions relating to each month may have to be the subjects of individual appeals before the TAT. Accordingly, it is our view that refund decisions ought to be retained as tax decisions, with the implication that the current Section 47(13) ought to also be deleted.

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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#	Proposed change	Details	Our comments
15	Recovery of taxes due to other countries under international agreements for mutual administrative assistance	• The Bill 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 Bill 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. • Upon receipt of a request from another country to recover taxes from a person, the Bill proposes to empower the KRA to apply to the High Court for an order to freeze the subject person's funds, and to require the person to remit the tax demanded within a period specified via written notice. Notably, the proposed amendment retains the taxpayer's rights to dispute the liability and have the same determined in accordance with Kenyan tax legislation. • After collection of the tax, the KRA shall then deposit the amount with the Central Bank of Kenya for remission to the requesting country. **Effective date: 1 July 2023**	• The proposed amendments seek to formally recognize, in domestic law, conventions signed by Kenya regarding mutual administrative assistance with other revenue authorities. • The proposals 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. Under this Convention, revenue authorities of participating states cooperate in the recovery of foreign tax claims and the exchange of information, with the aim of ensuring compliance and minimizing tax evasion. • The proposed amendments signal Kenya's intent to fully incorporate the Convention's measures, further supported by the recent introduction of country-by-country reporting and common reporting standards, all of which are essential components of cooperation and information sharing between revenue authorities under the Convention. • Should the proposed amendment be enacted, it is also expected that Kenya can similarly request the revenue authorities of other countries which have signed the Convention to assist in recovering taxes due in Kenya from other jurisdictions.

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Tax Administration

#	Proposed change	Details	Our comments
16.	Alternative Dispute Resolution ("ADR") at the TAT or courts of law	• The Bill proposes to amend Section 55 of the TPA to increase the timelines for the settlement of tax disputes via ADR from the current 90 days to 120 days from the date the TAT or court permits the ADR engagements. **Effective date: 1 July 2023**	• From a practical perspective, the current 90 days for ADR engagements as provided by law have proven to be inadequate for the resolution of tax disputes. In addition, since Section 55(2) requires disputes not resolved within the 90 days to be referred back to the TAT/court, the current timelines have resulted into rushed and inconclusive ADR engagements between taxpayers and the KRA. This proposal is therefore auspicious for both taxpayers and the KRA as it provides an additional 30 days for ADR discussions. The proposal is also aligned with the constitutional imperative under Article 159 for courts and tribunals to promote ADR.
17.	Grounds of appeal to the TAT or courts	• The Bill proposes 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. **Effective date: 1 July 2023**	• Presently, the TPA restricts taxpayers from relying on grounds other than those in their objections when proffering an appeal at the TAT or the courts. However, this restriction is waived where the TAT or court allows the taxpayer to rely on other grounds. The proposed amendment seeks to eliminate this avenue for taxpayers to apply to the court or TAT to rely on additional grounds. • In our view, the proposed amendment will limit taxpayers' right to access to justice and a fair trial, by preventing them from adducing new grounds which may have arisen after they lodged their objection. In the interests of justice and fairness, this proposal should be dropped to allow the TAT or courts to determine, on a case-to-case basis, whether a taxpayer can adduce additional grounds.

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Tax Administration

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18.	New data management and reporting system ("DMRS")	• The Bill seeks to introduce 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. - 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 proposed amendment signals the KRA's intent to gain enhanced visibility of taxpayers' transactions, with the aim of enhancing compliance and revenue collection. • It is likely that the DMRS will provide a database of information for use by the KRA in assessing tax risks for purposes of conducting tax audits. • If enacted, taxpayers shall have to submit any documents via the DMRS as required via a written notice from the KRA. • The KRA shall also have to navigate confidentiality and data privacy concerns, in view of its obligation under the TPA to maintain confidentiality, and the evolving data protection landscape in Kenya.
19.	Penalties and sanctions	• The Bill seeks to amend the TPA by introducing higher rates and new penalties and offences as follows: - An increase in the tax shortfall penalty from 7.5% of the shortfall to double the amount of the shortfall. Effective date: 1st July 2023 - An increase in the penalty for failing to issue an 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. 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 proposed amendments are targeted at acting as a further deterrence against noncompliance with tax laws. However, the exponential increase in the penalty rates is gratuitously excessive and punitive and could end up disincentivizing cooperation between taxpayers and the revenue authority, which is crucial for tax administration.

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Tax Administration

#	Proposed change	Details	Our comments
20.	Concurrent civil and criminal proceedings in tax disputes	• The Bill seeks to amend the TPA by 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. **Effective date: 1 July 2023**	• This proposal aims to supplement the current provisions of the TPA, which provide that the prosecution of a taxpayer in a criminal case does not abate the payment of tax, penalties or interest due from the same taxpayer. • The proposal would also act as a further deterrent against noncompliance with tax laws, as default could attract both civil and criminal liability.

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Other Measures

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Other Measures

We outline other proposed measures as below.

#	Proposed change	Details	Our comments
1.	Employment Act, 2007-Deductions into the National Housing Development Fund **(NHDF).** *Cap. 117.*	• The Finance Bill is proposing amendment to the Employment Act, to provide for contribution by employers and employees to the NHDF established under the Housing Act. The clause also stipulates the benefits of an employee who contributes to the fund. • The proposed rate is 3 % of the employee's basic salary, to be contributed by the employee and 3% by the employer. The total sum contribution is however capped to a maximum of Ksh.5,000 per month. The contributions will be payable by the ninth day of the month following the month of deduction. • Currently the contribution is on voluntary basis at 1.5% on employee's monthly basic salary and the employer matches the same amount. **Effective date: 1 July 2023**	• The move is aimed at increasing the government fund pool towards NHDF project in a bid to fulfil its affordable housing agenda. • By expounding on the benefits, the provision seeks to bring more clarity especially to the contributors who may not be interested in owning houses through the programme. • Legal battles are likely to ensue again on this matter. • This provision will increase the cost to employers and reduce the disposable income of employees taking into account other statutory deductions which have also been increased thus leaving employees worse off. • Employers and employees might decide to change the structure of emoluments to limit the amount of basic pay in a bid to reduce the 3% contribution towards the NHDF.

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Other Measures

#	Proposed change	Details	Our comments
2.	Retirement Benefits (Deputy President and Designated State Officers) Act, 2015	• The Bill proposes to repeal Section 4 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015. This section provides 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. Section 4 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. **Effective date: 1 July 2023**	• 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 when 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.
3.	Entitlements for person holding appointive or elective position in Government.	• The Bill now seeks to introduce Section 4A to highlight the benefits payable to entitled persons who hold appointive or elective offices in Government. The benefits include a monthly pension equal to eight per cent 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 Bill also specifically enumerates the benefits that shall be withdrawn until they cease to hold the appointive or elective posts. **Effective date: 1 July 2023**	• 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. The proposal seeks to avert a situation where the affected person enjoys similar benefits both under the Retirement Benefits Act and as an appointed/elected official.

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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Other Measures

#	Proposed change	Details	Our comments
4.	Entitlement to parliamentary pension	• The Bill further introduces section 4B which preserves 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 this Act. **Effective date: 1 July 2023.**	• 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.
5.	Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 (Cont'd)	• Section 5 (I) is also set to be 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 for female children. • Section 5(2) is set for deletion meaning that entitled persons who serve in office for less than a term will still enjoy full benefits listed under the Act. The Bill also proposes to repeal section 16 of the Act 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. **Effective date: 1 July 2023.**	• 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. • This proposal might face legal challenges by virtue of the fact that it specifies ''for female children'', which might be construed as discrimination on the basis of gender. • This might create a situation where an entitled person gets benefits under both this law and any other Act or Policy

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Other Measures

#	Proposed change	Details	Our comments
6.	Unclaimed Financial Assets Act, 2011	• The Bill proposes to amend section 28 of the Unclaimed Financial Assets Act, 2011, in subsection (5), by inserting the words “or such other person as the claimant may designate” immediately after the word “claimant”. **Effective date: 1 July 2023.**	• 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.

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