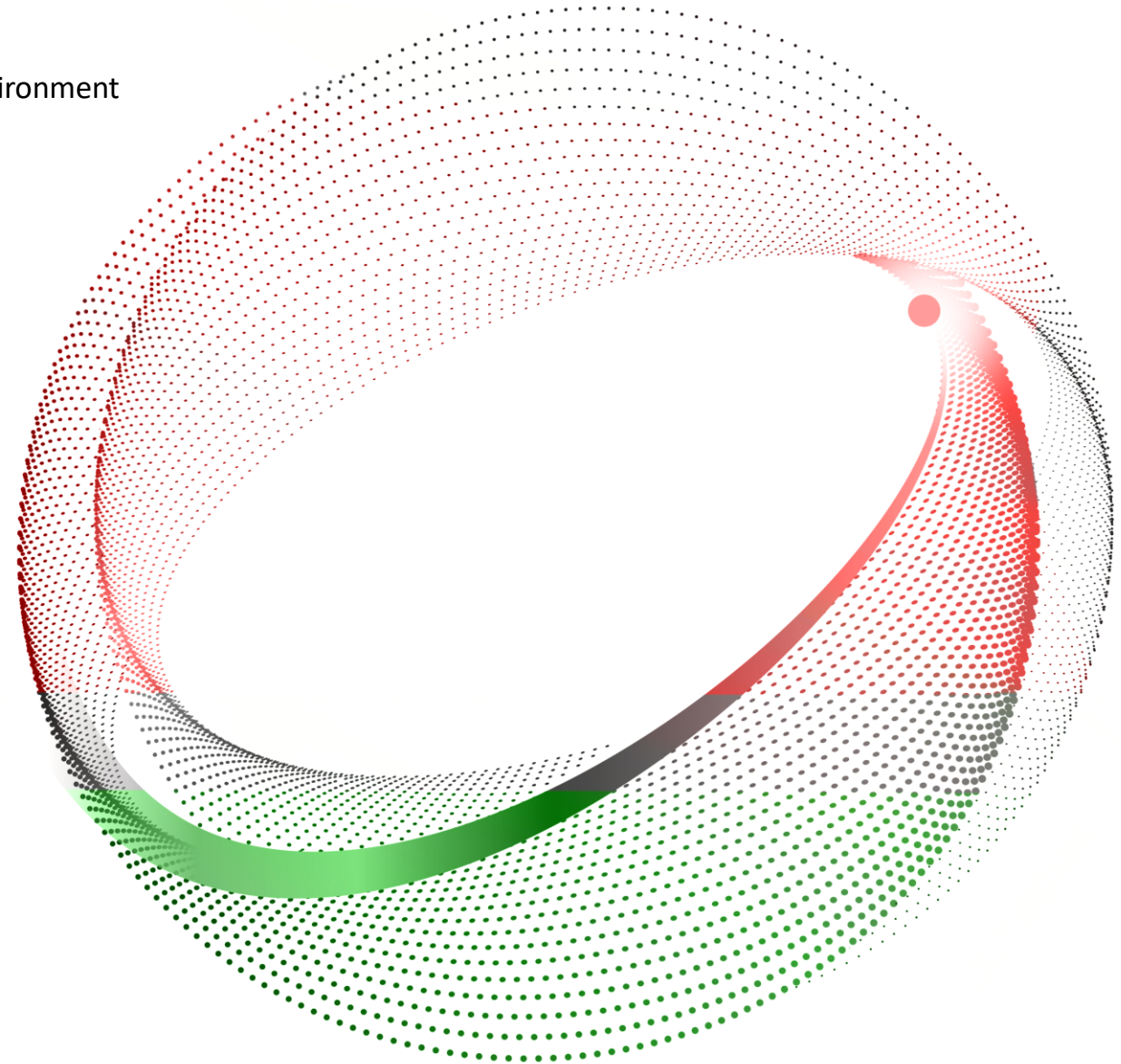


Finance Bill 2023 Insights
Navigating headwinds for inclusive growth

MAY 2023

Program

- 0830 ● Introductory Remarks – An overview of the fiscal environment
Walter Mutwiri
- 0835 ● Income Tax proposals
Maurice Lugongo
- 0855 ● Personal Income Tax proposals
Maureen Kimamo
- 0910 ● Tax Procedures & miscellaneous proposals
Sharon Terer
- 0925 ● Value Added Tax proposals
Kennedy Okoyo
- 0940 ● Excise duty & miscellaneous fees & levies
Peter Njenga
- 0955 ● Panel Discussions
Moderator: Lina Omole
- 1025 ● Questions & Answers
- 1030 ● Closing Remarks
Walter Mutwiri





Welcome & Introduction

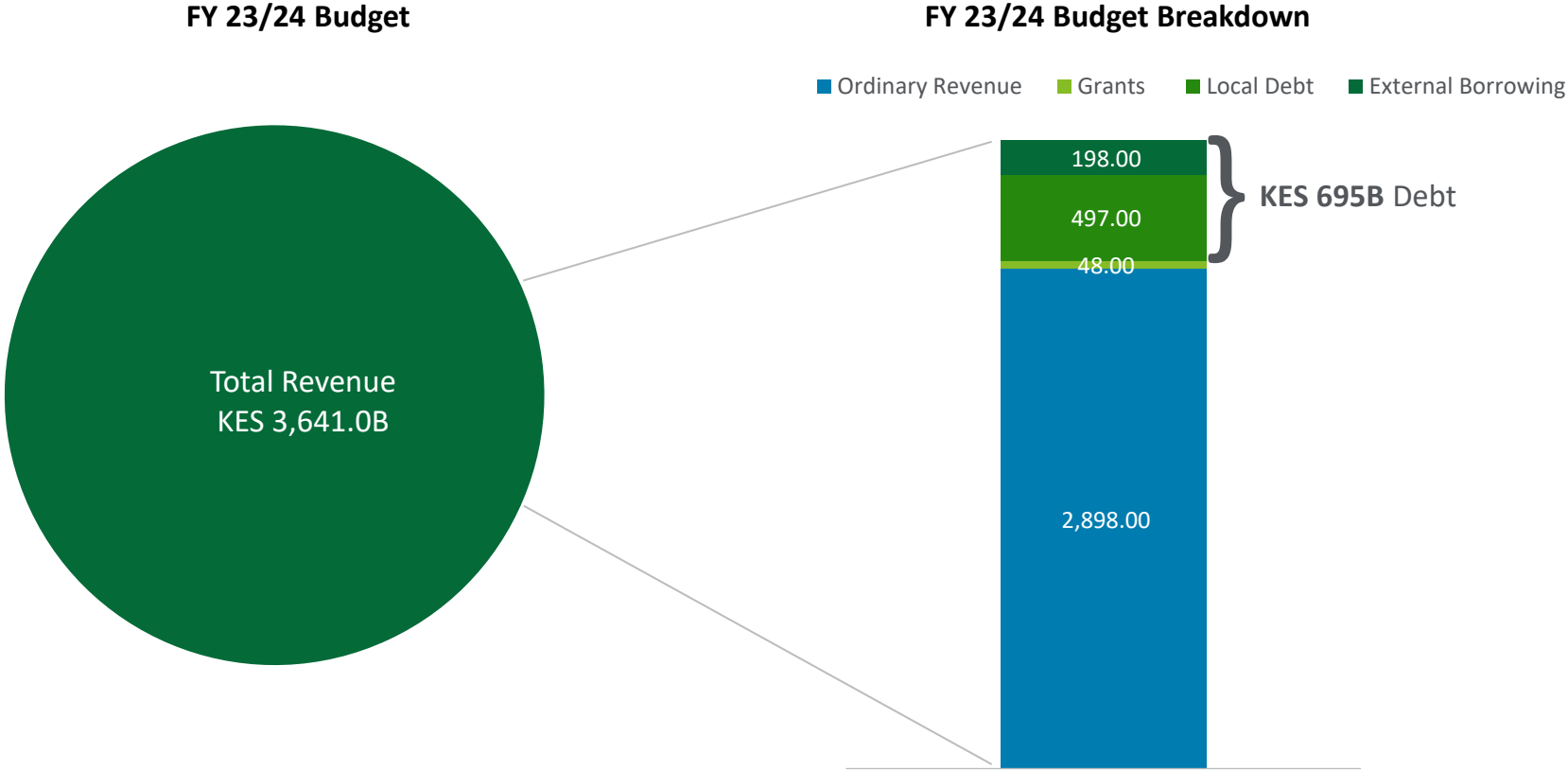
Walter Mutwiri

Partner, Tax & Legal, Deloitte East Africa



Revenue Projection for the Fiscal Year 2023/24

The Kenya government plans to slow down on borrowing with a reduction of KES 154 billion in the amount of debt expected to be borrowed during the new regime's first full financial year in office. The government proposes to borrow KES 695 billion in the financial year 2023/24, down from the KES 849 billion that it budgeted to borrow in the current financial year ending 30 June 2023.



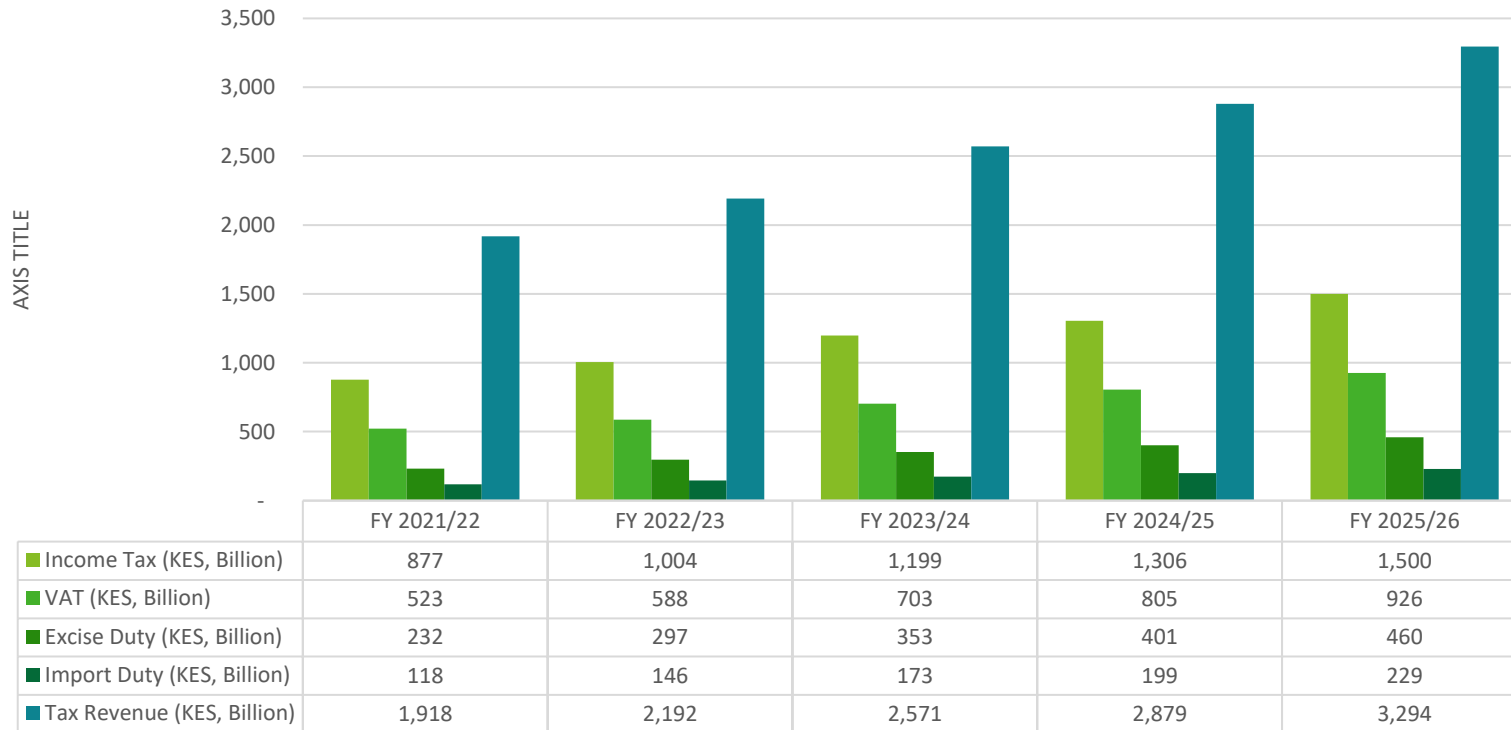
Source: 2023 Budget Policy Statement



Finance Bill 2023 Insights

Overview

Trend in Tax Revenue



Source: 2023 Budget Policy Statement

- Tax revenues grew by 14.3% of GDP in FY22/23. They are expected to grow above 17.8% of the GDP in the FY 2023/24 and above 18% over the medium term;
- Government to scale up revenue budget to **KES 3 trillion** in FY 23/24 and **KES 4 trillion** in the medium term;
- Total expenditure expected to decline from 23.7% of the GDP to 22.3% of the GDP;
- Fiscal deficit including grants to reduce from 833.9 billion (5.7% of the GDP) in the FY 2022/23 to KES 720.1 billion (4.4% of the GDP) in FY 2023/24



Finance Bill 2023 Insights

Overview

Kenya Tax Policy

National Tax Policy

- National Tax Policy (NTP) expected to be rolled out anytime in FY 23/24;
- Public participation has already taken place;
- Updated draft NTP may be released prior to finalization

Draft National Green Fiscal Incentives Policy Framework

Regulations

- Green Fiscal Incentives Policy Framework published by CS Treasury
- Some of the key policy tools include the use of carbon tax, rebates, subsidies, tax exemptions, ecological fiscal transfers, research grants, concessional loans, guarantees, interest rate subsidies, creation of a green bank among others.

Effort to reduce tax expenditure

- Deliberate effort to reduce the tax expenditure, currently at 2.15% compared to 4.77% in 2017;
- Tax exemptions and incentives expected to shrink going forward

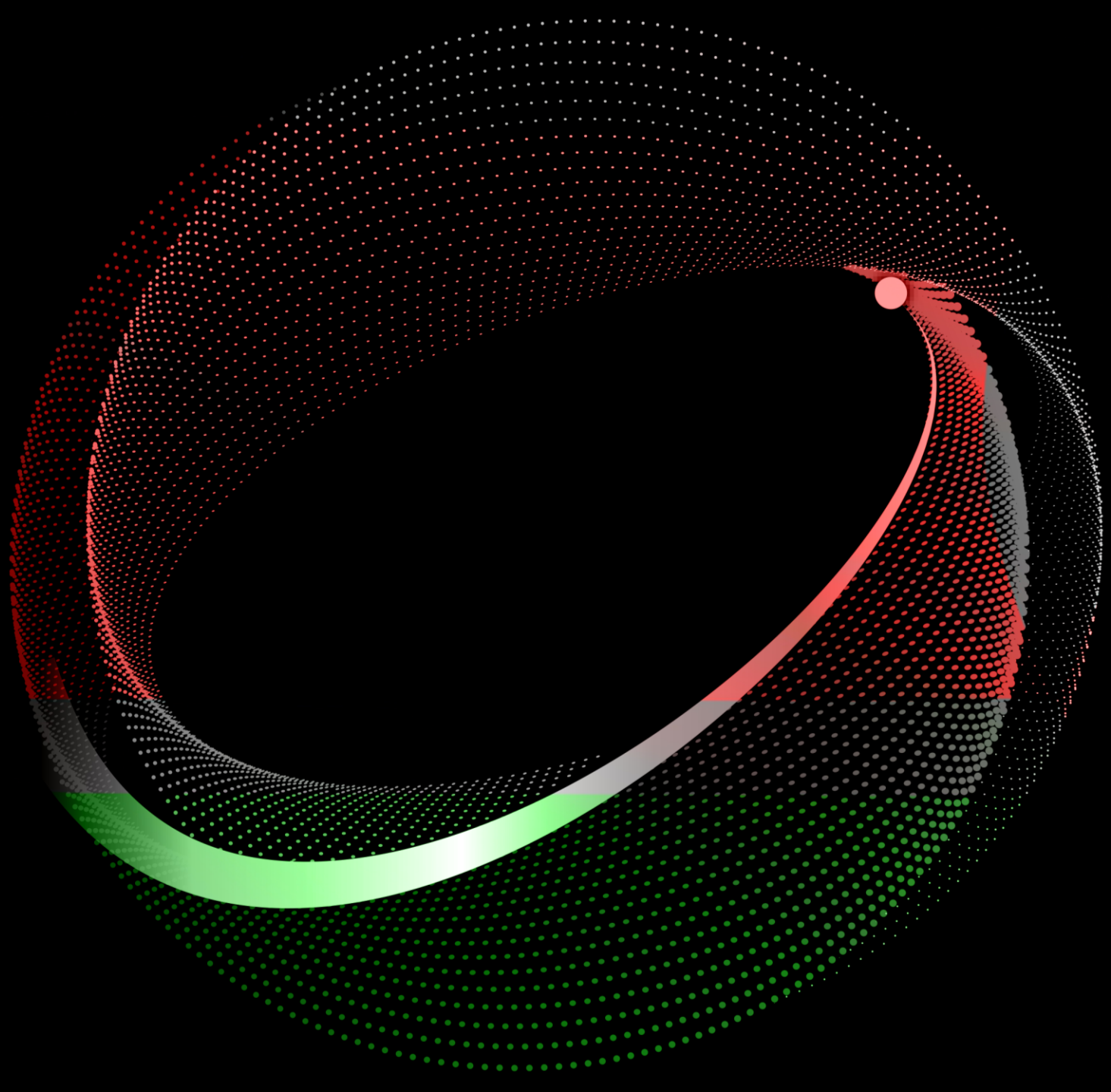
Kenya: Tax Administration updates

1. Continued roll out of technology – eTIMS as well as customs
2. Tax base expansion targeting, especially the informal sector. As per the Micro-Small and Medium Enterprises (MSME) survey the potential taxable base is KES 2.8 trillion
3. Notice on suspension of processing of waivers, exemptions and reliefs; Audit of historical exemptions, reliefs and taxes abandoned ongoing, and some delay expected in processing the impacted applications in the interim
4. Key positions, including the Commissioner General Position, at Kenya Revenue Authority (KRA) yet to be filled substantively. Expect some disruptions in the short term.
5. Proposal for Agency Taxes to be remitted to KRA in real-time, i.e., within 24 hours of deduction, in some cases and 3 days in others.



Income Tax Proposals

Maurice Lugongo, Senior Tax Manager



Corporate Tax

Interest restriction rule changes

- Interest restriction to apply only on interest paid to non-resident persons in excess of 30% of EBITDA.
- The disallowed interest is to be claimed as a deduction in the subsequent 3 years in case the interest falls to 30% of EBITDA or lower.
- Manufacturing entities that had been excluded from the interest limitation rules through the Finance Act 2022 will no longer be exempted from the rules.

Effective date: 1 January 2024.

Deferred forex losses to be allowed within 3 years

- Deductibility of realized foreign exchange (forex) losses to be deferred only where interest paid or payable to non-resident persons exceeds 30% of EBITDA. Currently, the deferral applies to all companies where total interest (paid to both resident and non-resident persons) exceeds 30% of EBITDA.
- The deferred forex losses will be allowed in the subsequent 3 years.

Effective date: 1 July 2023.

e-TIMS compliant invoice to be a requirement for deductibility of expenditure

- No deduction shall be allowed where invoices are not generated from an electronic tax invoice management system ("e-TIMS").
- There is an exception for transactions that are exempted from eTIMS under the Tax Procedures Act, 2015. Such transactions include emoluments, imports, investment allowances, interest and similar payments.

Effective date: 1 January 2024.

Club subscriptions paid by the employer on behalf of an employee to be allowable

- Club subscriptions paid by an employer on behalf of an employee to be allowed as a deduction.
- However, there is a proposal to have these subscriptions taxed on the employee (although there is ambiguity on the intention of the proposal)

Effective date: 1 January 2024.

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Corporate Tax

A branch to be taxed at 30%

- The CIT rate for a non-resident company operating in Kenya through a permanent establishment/ branch is to be reduced from 37.5% to 30%.
- There is also a proposal to introduce tax on the repatriated profit of the branch (although the rate has not been specified). Repatriated profit shall be the sum of the net assets at the beginning of the year and the after-tax profits for the year less the net assets at the end of the year.

Effective date: 1 January 2024.

Introduction of industrial building and dock investment allowances at 10% p.a.

- Investment allowance at 10% per year to be introduced on docks and industrial buildings.

“Industrial building” includes buildings in use for the purpose of transport, bridge, tunnel, inland water navigation and electricity or hydraulic power undertaking”

“dock” includes a container terminal berth, harbour, wharf, pier, jetty, storage yard, or other works in or at which vessels load or unload merchandise but does not include a pier or jetty used for recreation.

Effective date: 1 January 2024.

Investment allowance on telecommunication equipment to cover civil works

- The Bill proposes to expand the applicability of investment allowances on telecommunication equipment to, not only cover the cost of the equipment, but also costs incurred on civil works deemed as part of the equipment and civil works that contribute to the use of the equipment.
- The civil works include earthworks and construction works undertaken in connection with the installation and maintenance of telecommunication equipment and related structures.

Effective date: 1 January 2024.

Applicability of the 100% accelerated investment allowance

- The Bill proposes to limit the applicability of the accelerated investment allowance of 100% on the high value investments made outside Nairobi and Mombasa Counties to only hotel buildings, buildings used for manufacture and machinery used for manufacture.
- The accelerated allowance shall also not apply to investments which, due to the nature of the business, have to be located in places outside Nairobi and Mombasa Counties.

Effective date: 1 January 2024.

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Corporate Tax

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.
 - 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.

Effective date: 1 January 2024.

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Other corporate tax amendments

Monthly residential rental income tax rate to reduce from 10% to 7.5%. **(Effective date: 1 January 2024).**

Companies undertaking the manufacture of human vaccines, which are currently exempt from income tax, to be taxed at 10%. **(Effective date: 1 January 2024).**

Advance tax on commercial motor vehicles expected to double. **(Effective date: 1 January 2024).**

Trade associations will no longer be required to elect to the Commissioner to be taxed. They will by default be required to pay tax on their gross revenue receipts (excluding joining fees, welfare contributions and subscriptions). **(Effective date: 1 July 2023).**

The Bill proposes to exempt joining fees, welfare contributions and subscriptions relating to a members' club from tax. All other receipts shall be taxable regardless of the % of gross receipts from members. 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. **(Effective date: 1 July 2023).**

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Withholding Tax

Introduction of withholding tax on digital content monetization payments

- WHT at 15% is to be introduced on payments made in respect of digital content monetization.
- The term “digital content monetization” has been defined as *offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel.*
- These payments will need to be included in Section 10 of the ITA for the WHT to be legal

Effective date: 1 July 2023.

Introduction of WHT sales promotions, marketing and advertising payments to residents

- WHT at 5% is to be introduced on payments made to resident persons or PEs in respect of sales promotions, marketing and advertising services. Currently, only payments made to non-residents attract WHT.
- Similar payments to non-residents are already subject to WHT.

Effective date: 1 July 2023.

Reduction of the WHT rate on immovable property rent

- The withholding tax rate on immovable property rent to reduce from 10% to 7.5%.
- This aligns with the proposed deduction of the monthly residential rental income tax rate from 10% to 7.5%.

Effective date: 1 January 2024.

WHT deducted by a person to be remitted to KRA by the following day

- WHT to be remitted to KRA within 24 hours of deduction. Currently, taxpayers are expected to remit WHT on or before the 20th day of the month following the month in which the deduction was made.

Effective date: 1 July 2023.

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Other withholding tax amendments

Property agents who receive rental income on behalf of the property owners may be appointed by KRA to deduct WHT on the rent received. The amount deducted will need to be remitted to KRA within 24 hours. **(Effective date: 1 July 2023).**

Withholding tax on winnings to be based on the payouts made without deducting the amount staked or wagered. **(Effective date: 1 July 2023).**

Withholding tax that may have been paid on a payment to a non-resident will not be refundable or deductible as an expense where an audit adjustment is made in respect of such payment. **(Effective date: 1 July 2023).**

Interest and royalties paid to a non-resident person by a company undertaking the manufacture of human vaccines are to be exempted from tax. Therefore, no withholding tax will be applied on such payments. **(Effective date: 1 July 2023).**

Investment income from a post-retirement medical fund to be exempt from tax. Any withholding tax on such investment income will therefore not apply. **(Effective date: 1 July 2023).**

Owners of digital asset platforms shall be required to deduct digital asset tax and remit to KRA within 24 hours (see more details under digital asset tax). **(Effective date: 1 January 2024).**

Capital Gains Tax

Indirect transfers to be subject to CGT

- The Bill proposes to introduce provisions that will impose CGT on:
 - a) an indirect transfer of shares (or comparable interest, including interest in a partnership or trust) where the shares or comparable interest derived at least 20% of their value directly or indirectly from immovable property in Kenya; and
 - b) An indirect transfer of shares of a company resident in Kenya if the transferor held directly or indirectly at least 20% of the capital of that company.

Effective date: 1 July 2023

Determination of adjusted cost

- The Bill proposes to introduce a provision, which provides that where property was transferred in a transaction that is not subject to CGT and the property is subsequently transferred in transaction that is subject to CGT within a period of less than five years, the adjusted cost in the subsequent transfer shall be based on the adjusted original adjusted cost as determined in the first transfer.
- This is an anti-avoidance provision to ensure that adjusted cost of a transaction is not artificially inflated.

Effective date: 1 July 2023

Due date for CGT payment

- The Bill proposes to amend the due date for payment of CGT to be the earlier of;
 - receipt of the full purchase price by the vendor; or
 - registration of the transfer.
- 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.

Effective date: 1 July 2023

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

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Turnover Tax

Change of the turnover tax income bracket

- The Bill proposes to amend the turnover tax income bracket from KES 1m - 50m to KES 500k - KES 15m.

Effective date: 1 July 2023

Increase in the turnover tax rate

- The Bill proposes to increase the turnover tax rate from 1% to 3%.

Effective date: 1 July 2023

Digital Asset Tax

Introduction of digital asset tax

- A tax to be known as “Digital Asset Tax” is to be introduced at 3% of the transfer or exchange value of a digital asset.
- This tax will affect the traders in cryptocurrency (such as bitcoin) as well as the non-fungible tokens (NFT) market.
- The tax is payable by the owner of the platform or the person who facilitates the exchange or transfer of a digital asset.
- Non-resident persons who own platforms on which digital assets are exchanged or transferred to register under the simplified tax regime.

Effective date: 1 January 2024.

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Personal Income Tax Proposals

Maureen Kimamo, Tax Manager



Personal Income Tax

The Bill proposes to expand the individual tax bands by introducing a new marginal tax rate of 35% as captured in the table below.

The proposal targets high earning employees to ensure that they pay more tax. However, this may inadvertently net in employees on irregular pay such as salespeople.

Annual tax bands	Tax rate
On the first 288,000	10%
On the next 100,000	25%
On the next 5,612,000	30%
All income over 6,000,000	35%

Tax band	Taxable income	Tax rate	Tax amount
Illustration using current bands			
First 24,000	24,000	10%	2,400
Next 8,333	8,333	25%	2,083
Income above 32,333	572,667	30%	171,800
Total	605,000		176,283
Illustration using proposed bands			
First 24,000	24,000	10%	2,400
Next 8,333	8,333	25%	2,083
Next 467,667	467,667	30%	140,300
Income above 500,000	105,000	35%	36,750
Total	605,000		181,533
Difference in tax payable (181,533 – 176,283)			5,250

Effective date: 1 July 2023

Introductory Remarks

Income Tax

Personal Income Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees & levies

Other measures

Personal Income Tax

Introduction of a contribution to the National Housing Development Fund (NHDF)

- The bill proposes the introduction of the National Housing Development Fund, to which employees will contribute **3%** of their basic monthly salary.
- The employer is required to match the contribution.
- Contributions are subject to a cap of **KES 5,000** per month.
- Employees who qualify for affordable housing will use their accrued contributions to finance the purchase of a home under the affordable housing scheme.

Options for ineligible employees

At the earlier of retirement or lapse of 7 years, ineligible employees can;

- Transfer to a retirement benefits scheme registered with the Retirement Benefits Authority;
- Transfer to any person registered and eligible for affordable housing under NHDF;
- Transfer to a spouse or dependent children
- Encashment which shall be subject to tax at the prevailing rates

The 2018 attempt to introduce a Housing Levy failed for, amongst other reasons, failure to provide alternatives for contributors particularly those who do not qualify for affordable housing. The current proposals seek to remedy this.

- It will be useful to define an employee for purposes of this fund and exempt those already with houses and foreign nationals on assignments in Kenya or even make it a voluntary contribution.

Effective date: 1 July 2023

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Personal Income Tax

Standard AA Mileage Rate to determine non-taxable travel allowance

- Currently, there is no clear guidance on the taxation of travel allowances. Companies have different policies including requiring employees to demonstrate that allowances were spent entirely in the course of official duty.
- The bill proposes amendments that will set the tax-free threshold in respect of travelling allowance on official duties to the standard mileage rates of the Automobile Association of Kenya (AAK).
- This is good for predictability and uniformity.

Effective date: 1 July 2023

Club entrance and subscription fees to be taxed on both the employer and the 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 also proposes to delete Section 16(2)(a)(v) of the ITA which provides for disallowance of club entrance fees and subscription fees for corporation tax purposes.
- 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 tax.
- We expect the above issue to be addressed prior to enactment of the Bill.

Effective date: 1 July 2023

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Personal Income Tax

Deferred benefit on shares issued by a start-up in lieu of cash

- The bill proposes to introduce a new subsection covering taxation of the benefit from shares issued in lieu of cash to employees of **an eligible start up**.
- The tax point for such employees shall be deferred to **within thirty days** of the earlier of;
 - 5 years after the year in which the award is given to the employee;
 - The date the employee disposes the shares;
 - The date the employee ceases to be an employee of the eligible start up.

Definition of an eligible start up

- The Bill defines an eligible start up as a business incorporated in Kenya that;
 - Has an annual turnover of not more than KES 100 million;
 - Does not carry on management, professional, or training business;
 - Has not been formed as a result of splitting or restructuring of an existing entity; and
 - Has been in existence for a period of not more than 5 years.

Effective date: 1 July 2023.

Introduction of Post-Retirement Medical Fund relief

- 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 proposed relief is 15% of the amount of contribution paid or KES 60,000 whichever is lower

Effective date: 1 January 2024

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Personal Income Tax

Reimbursements of public officers on expenses incurred in the course of duty

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.

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 good governance which include accountability. It has potential for misuse of public funds.

Effective date: 1 July 2023

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.

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.

This is welcome as it expands the scope of institutions individuals can obtain mortgage loans and enjoy the interest deduction benefit.

However, clarity on the numbering of the financial institutions in the fourth schedule is necessary.

Effective date: 1 July 2023

Tax Procedures & Administrative Proposals

Sharon Terer, Tax Manager



Tax Administration

20% of disputed tax to be deposited before appealing to the High Court

- The Bill proposes that taxpayers aggrieved by the TAT's decision should deposit 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
- This proposal has made a comeback after an almost similar change was proposed in 2022.
- If enacted, it will present major cashflow issues for taxpayers. The proposal will also deny taxpayers justice and encourage Alternative Dispute Resolution (ADR) that is not necessarily voluntary.

Effective date: 1 July 2023.

Refund decisions to be challenged before the TAT

- The Bill proposes to eliminate refund decisions from the scope of tax decisions. Resultantly, a decision issued in relation to a refund would constitute an appealable decision.
- The proposal seeks to clarify that refund decisions are "appealable decisions", which taxpayers can challenge directly before the TAT, and not "tax decisions", which taxpayers can only challenge first through the objection process.

Effective date: 1 July 2023.

Resident trustees to maintain records

- The Bill proposes that residents who are trustees of trusts, whether registered in or outside Kenya, should maintain and avail to the KRA records as required under existing tax legislation.
- The proposal reflects the KRA's intent to monitor the activities of trusts, which are regarded as high-risk vehicles for tax-related risks such as tax evasion.

Effective date: 1 July 2023.

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Tax Administration

Recovery of taxes due to other countries

- The Bill proposes to empower the Commissioner to recover taxes due in other countries from persons in Kenya, upon request by the other country's revenue authority.
- Such a request would be made pursuant to international agreements signed by Kenya relating to mutual administrative assistance in tax matters between revenue authorities.
- The proposals are made following the entry into force of the Convention on Mutual Administrative Assistance in Tax Matters, to which Kenya is a party.
- The changes will allow the KRA to assist the revenue authorities of other countries to recover foreign tax claims or liabilities from persons in Kenya. This will ensure compliance and minimize tax evasion.

Effective date: 1 July 2023.

All taxpayers to issue electronic tax invoices

- The Bill proposes to obligate all taxpayers carrying on a business in Kenya to issue electronic tax invoices through a system established by the KRA.
- The Bill proposes that the electronic tax invoices may exclude emoluments, imports, investment allowances, interest and similar payments.
- Currently, only VAT-registered taxpayers are required to issue electronic tax invoices
- The proposed amendment is linked to the proposal under corporate tax to disallow all expenses or losses not supported by an electronic tax invoice. This could lead to increased compliance costs for SMEs and non-VAT registered taxpayers

Effective date: 1 September 2023.

Tax amnesty

- The Bill proposes to introduce an amnesty of interest, penalties or fines on unpaid taxes for taxpayers. This amnesty will apply to penalties, interest and fines on a tax debt where the Taxpayer paid the principal tax before 31 December 2022.
- If principal tax has not been paid by 31 December 2022, the Taxpayer may apply for an amnesty of interest, penalties or fines accrued as at that date. The Taxpayer will also be required to propose a payment plan for the outstanding amounts.
- The amnesty will only be granted if the Taxpayer settles the principal by 30 June 2024, does not incur further tax debt and signs a commitment letter for settlement of all outstanding tax due.
- Where the amnesty is granted but the principal tax has not been fully settled by 30 June 2024, the penalties and interest will start accruing again.

Effective date: 1 September 2023.

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Tax Administration

Security for unpaid taxes

- The Bill proposes that the Commissioner shall notify a taxpayer that their property shall be used as security for unpaid taxes 14 days after the registration of the security against the property's title document. Currently, a taxpayer ought to be notified before the registration of the security.
- If enacted, the Commissioner can 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 proposal poses a risk to taxpayers, as the KRA will only notify them after registration of the security against unpaid taxes.

Effective date: 1 July 2023.

Agency notices to be issued under additional circumstances

- The Commissioner to be empowered to issue agency notices under additional circumstances, such as where:
- The taxpayer has not objected to an assessment within 30 days.
- The taxpayer has not appealed against an objection decision or an unfavorable decision of the TAT or court within 30 days.
- The taxpayer has filed a return but has not paid the taxes by the due date
- Currently, the Commissioner can only issue agency notices where a taxpayer has failed to challenge an objection decision before the TAT within 30 days.
- The proposals will provide clarity on the instances under which an agency notice can be issued by the KRA.

Effective date: 1 July 2023.

Withholding VAT to be remitted within 3 days

- The Bill intends to obligate withholding VAT agents to remit withholding VAT to the KRA within 3 days after the deduction is made.
- Presently, withholding VAT agents are required to remit the tax not later than the 20th day of the following month.
- The proposed amendment will impose an unreasonable compliance and enforcement burden on the affected taxpayers and the KRA.

Effective date: 1 July 2023.

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Tax Administration

Appointment of rental income tax agents

- The Commissioner to appoint property agents who shall deduct rental income tax from the rent collected and remit the same to the KRA within 24 hours of deduction.

Effective: 1 July 2023.

Alternative Dispute Resolution (“ADR”) at the TAT or courts of law

- The Bill proposes 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: 1 July 2023.

Objections

- Where an objection is deemed to be invalid, the Commissioner should specify in the invalidation notice the information required from the taxpayer, to be provided within 7 days
- This will allow taxpayers the opportunity to remedy the defects that rendered their objections invalid. This opportunity is currently not enshrined in law.

Effective: 1 July 2023.

Grounds of appeal to the TAT or courts

- The Bill proposes to prevent the TAT or court from allowing a taxpayer to rely on grounds other than those initially contained in their objection

Effective: 1 July 2023.

Penalties and sanctions

- Shortfall penalty to increase from 7.5% to 200%

Effective: 1 July 2023.

- Failure to issue an invoice, file a tax return or make payment electronically to attract a penalty equal to the higher of 10 times the tax due or KES. 1m. The penalty is currently at KES. 100K

Effective: 1 Sep 2023.

Introductory Remarks

Income Tax

Personal Income Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees & levies

Other measures

Tax Administration

Refund or offset of overpaid tax

- The Bill proposes to allow taxpayers to apply for the offset of overpaid tax against their outstanding tax debts. Currently, the law only allows taxpayers to apply for an offset against future tax liabilities.
 - Where a taxpayer applies for a refund of overpaid tax instead, the overpaid tax should be repaid within 6 months. If not repaid within 6 months, the refund shall be used to offset the taxpayer's tax liabilities.
 - The proposals are a welcome relief for taxpayers, as they would allow taxpayers to offset tax overpayments against past, current and future tax liabilities.
 - Requiring approved refunds to be repaid within 6 months will also enhance efficiency in the processing of refunds.
- Effective date: 1 July 2023.**

New data management and reporting system ("DMRS")

- The Bill intends to establish a DMRS, through which taxpayers would be required to submit electronic documents upon receipt of a written notice from the Commissioner.
 - Such documents include electronic invoices in respect of transactions involving goods, services and royalties; as well as Transactional data, such as the names and addresses of parties to transactions.
 - The proposal signals the KRA's intent to gain enhanced visibility of taxpayers' transactions
- Effective date: 1 September 2023.**

Concurrent civil and criminal proceedings in tax disputes

- The Bill proposes that a dispute under a tax law can be prosecuted concurrently under both criminal and civil proceedings. The proposal would also act as a further deterrent against noncompliance with tax laws, as default could attract both civil and criminal liability.
- Effective date: 1 July 2023.**

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures



Value Added Tax Proposals

Kennedy Okoyo, Senior Tax Manager



Value Added Tax

Petroleum products to attract VAT at 16%

- The Bill proposes to increase the VAT rate of petroleum products listed in Section B of Part I of the First Schedule to the VAT Act from 8% to 16%.

Effective date: 1 July 2023.

Liquefied petroleum gas (LPG) to be VAT exempt

- The Bill proposes VAT exemption of LPG which is currently subject to VAT at 8%.

Effective date: 1 July 2023.

Exported services to be exempt from VAT

- The Bill proposes to introduce the exportation of taxable services under Paragraph 35 of Part II of the First Schedule to the VAT Act.
- It then proposes to delete exportation of taxable services in relation to business process outsourcing (BPO) under Paragraph 23 of the Second Schedule (zero-rating schedule) to the VAT Act.

Effective date: 1 July 2023.

Transfer of Business as a Going Concern to be exempt from VAT

- The Bill proposes to introduce Transfer of Business as a Going Concern (TOGC) under Paragraph 36 of Part II of the First Schedule to the VAT Act.

Effective date: 1 July 2023.

Amendment of Section 17 of the VAT Act

- Input tax to be deductible where the requisite documentation is available and the supplier has declared the sale in their VAT return.
- A provision that seeks to tax compensation for loss of taxable supplies is to be introduced.

Effective date: 1 July 2023.

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Value Added Tax

Clarification on registration threshold for non-residents making digital marketplace supplies suppliers

- The Bill proposes to amend Section 34 of the VAT Act such that registration threshold does not apply to non-resident persons making digital marketplace supplies in Kenya.

Effective date: 1 July 2023.

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.

Exemption of tea sold for the purpose of value addition before exportation

- The Bill proposes to exempt all tea sold for the purpose of value addition before exportation subject to approval by the Commissioner for Customs.

Effective date: 1 July 2023.

Zero-rating of inbound international sea freight offered by a registered person

- The proposal comes on back of various debates on taxability of freight services relating to imported goods under Section 14 of the VAT Act.
- It ensures that the supplier of the international sea freight will charge VAT at 0% as the same freight value is included in computing the taxable value of the imported goods.

Effective date: 1 July 2023.

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Value Added Tax

Proposed change of status from exempt to standard rated at 16% (Effective date: 1 July 2023)

Item
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
Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel).
Plant, machinery and equipment used in the construction of a plastics recycling plant.
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.
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.
However, there is a proposal for a transition clause to allow utilization of exemptions already granted until the approved supply is made in full.

Proposed change of status from zero-rated to exempt (Effective date: 1 July 2023)

Item
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.
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.
Agricultural pest control products.
Transportation of sugarcane from farms to milling factories.
Fertilizers of chapter 31
Inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved by the Cabinet Secretary responsible for matters relating to agriculture.



Excise Duty Proposals

Peter Njenga, Senior Tax Manager



Excise Duty

Inflationary adjustment of excise duty rates

- Repeal of annual inflationary adjustment of specific excise duty rates.

Effective date: 1 July 2023

Fees charged by digital lenders

- Any amount charged by digital lenders in respect of lending to be subject to excise duty

Effective date: 1 July 2023

Definition of other fees

- To delete the phrase “relating to their licensed activities” from the definition of other fees

Effective date: 1 July 2023

Payment of excise duty on betting and gaming

- Bookmakers to remit excise duty on betting and gaming within 24 hours from the closure of transactions of the day.
- The Commissioner may require any other taxpayers to remit excise duty within 24 hours from the closure of transactions of the day.

Effective date: 1 July 2023

Introductory Remarks

Income Tax

Personal Income Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees & levies

Other measures

Excise duty

Increase of excise duty on various services

- 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%
- Betting, gaming, price competition and lottery from 7.5% to 20%

Effective date: 1 July 2023

Reduction of excise duty on various services

- Telephone and internet data services from 20% to 15%
- 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

Introduction of excise duty on various goods and services

- Imported fish, powdered juice and sugar
- Locally manufactured sugar confectionery & pasta
- Human hair, wigs, false beards, eyebrows, eyelashes, switches and artificial nails
- Imported cement, furniture, paints, varnishes, lacquers, test liner, fluting medium
- 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

Removal of excise duty on certain goods

- Condensates
- Locally manufactured articles of plastic

Effective date: 1 July 2023

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures



Miscellaneous Fees & Levies

Peter Njenga, Senior Tax Manager



Miscellaneous Fees & Levies

Change in IDF and RDL rates	Introduction of export and investment promotion levy	Reduction of export levy on raw hides and skins	Introduction of export levy duty on various products:	Amendment of IDF and RDL exemption schedule
<ul style="list-style-type: none"> Reduction of IDF and RDL rates from 3.5% to 2.5% and 2% to 1.5% respectively. Repeal of reduced IDF and RDL rate of 1.5% <p>Effective: 1 July 2023</p>	<ul style="list-style-type: none"> Export and investment promotion levy (EIPL) to apply on paper and paperboard products, iron and steel products and cement clinkers. Imports from EAC to be exempt from EIPL <p>Effective: 1 Sep 2023</p>	<ul style="list-style-type: none"> Rate to reduce from 80% or USD 0.52 per Kg to 50% or USD 0.32 per Kg on some raw hides and skins <p>Effective date: 1 July 2023</p>	<ul style="list-style-type: none"> Cobalt mattes and other intermediate products of cobalt metallurgy; cobalt and articles thereof, including waste and scrap Other waste and scrap of Tariff Code 8109.39.00 Molasses resulting from the extraction or refining of sugar of Tariff Heading 1703 <p>Effective: 1 July 2023</p>	<ul style="list-style-type: none"> RDL and IDF exemption to apply on LPG, all aircraft, spacecraft, and spare parts, all goods imported by KDF and NPS, goods imported by regional and international organisations and goods for official use by diplomatic and consular missions, the UN and its agencies, and institutions or organizations exempted under the Privileges and Immunities Act <p>Effective: 1 July 2023</p>

Introductory Remarks

Income Tax

Personal Income Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees & levies

Other measures

Other Measures

(Effective: 1 July 2023)



Employment Act, 2007

- The Government proposes to amend the Employment Act to require employees and employers to each contribute 3% of the employee's basic salary to the National Housing Development Fund (NHDF)
- The move is aimed at increasing the government fund pool towards NHDF project in a bid to fulfil its affordable housing agenda



Kenya Roads Board Act (KRBA)

- The Bill proposes to amend the KRBA by including a requirement that an annual estimate shall be submitted together with a collated road programme, comprising a comprehensive plan that ensures the rehabilitation and development of roads .
- This will foster accountability in the Kenya Roads Board's budget process and make fund allocations more transparent



Betting, Lotteries and Gaming Act (BL&GA)

- The government seeks to place administration of certain sections of the Betting Act under the Tax Procedures Act 2015 (TPA). These are mostly to do with offences their penalties and enforcement.
- The move seeks to centralize tax collection. It will leverage the capacity of Kenya Revenue Authority in revenue administration



Unclaimed Financial Assets Act, 2011 (UFAA)

- The Bill proposes to amend the UFAA in Subsection 28(5) to allow a claimant to designate another person to receive the asset or proceeds of the disposed asset.
- 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.

Introductory Remarks

Income Tax

Personal Income Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees & levies

Other measures

Other Measures

(Effective: 1 July 2023)



Statutory Instruments Act

- The Bill proposes deletion of sections of the law which provides for automatic revocation of statutory instruments upon expiry of 10 years, unless they are extended or amended.
- The change is aimed at aligning with the Revision of Laws Act. It also removes the uncertainty that arises every 10 years where there has not been any amendment or timely extension of a statutory instrument.



Retirement Benefits (Deputy President and Designated State Officers) Act, 2015

- The Bill proposes to repeal section 4 of the law that sought to withdraw benefits payable to entitled persons, surviving spouses or children under certain circumstances, such as involvement in politics, a conviction for offences and public appointment.
- This aligns to a decision rendered at the High Court of Kenya in May 2019 declaring the section unconstitutional.
- The change decreases the monthly pension benefits accruing to entitled persons who hold appointive or elective offices in Government from 80% to 8% of the last salary. All other benefits will be scraped off for the time that the entitled person continues to hold an elective or appointive office.
- This aims to avert situations where someone enjoys similar benefits under the Retirement Benefits Act and the appointed/elected office.
- The Bill propose to introduce 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.
- This shall put undue pressure on the exchequer and might appear extravagant in a struggling economy.

Introductory
Remarks

Income Tax

Personal Income
Tax

Tax administration

Value Added Tax

Excise duty

Miscellaneous fees
& levies

Other measures

Panel Discussion

Finance Bill 2023 Insights Navigating headwinds

Moderator



Lina Omole
Senior Manager
Tax & Legal

Guest Panelist



Peter Mungai
Head of Legal & Tax
Absa Bank Kenya

Deloitte Experts



Patrick Chege
Associate Director
Tax & Legal
Deloitte Kenya



David Mwiti
Associate Director
Tax & Legal
Deloitte Kenya



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our global network of member firms and related entities in more than 150 countries and territories (collectively, the “Deloitte organization”) serves four out of five Fortune Global 500® companies. Learn how Deloitte’s approximately 415,000 people make an impact that matters at www.deloitte.com.

© 2023. For information, contact Deloitte Touche Tohmatsu Limited.