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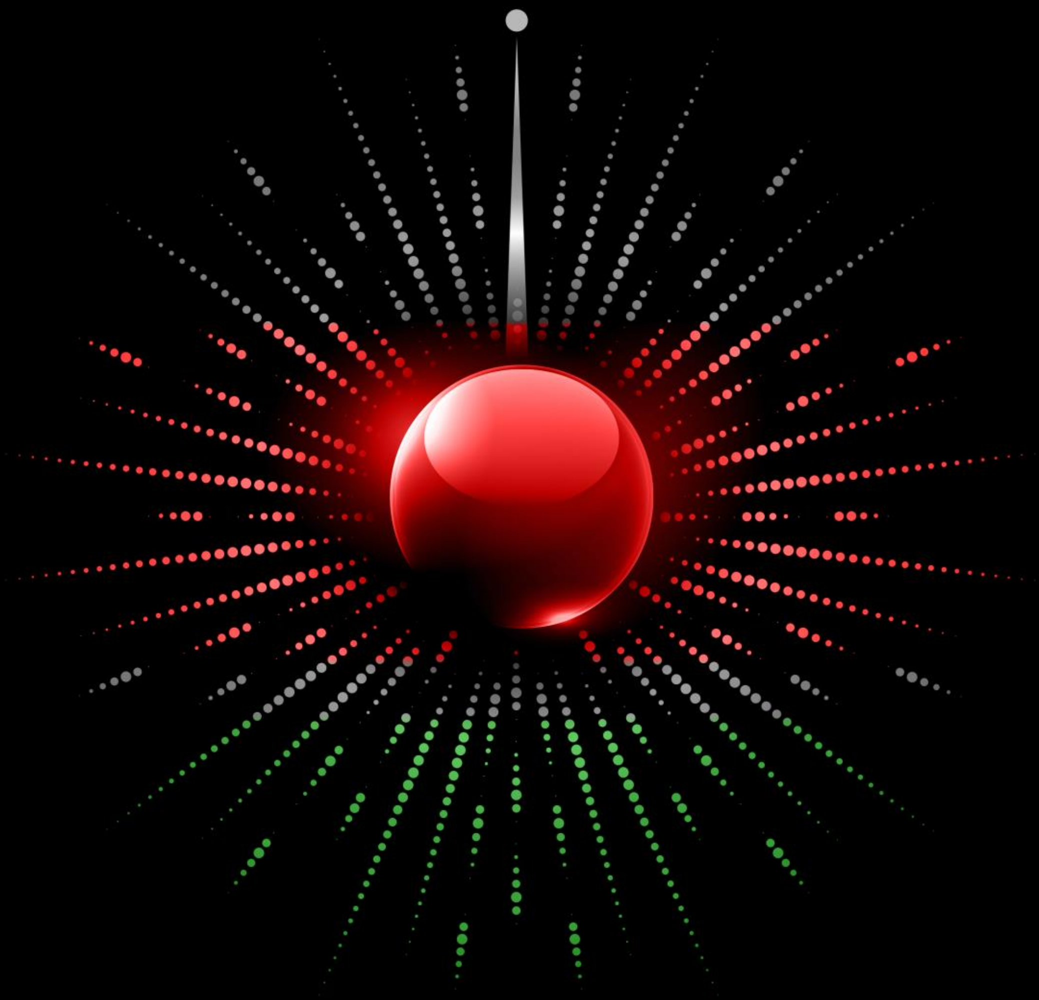

Finance Bill 2024 Insights

Balancing priorities for sustainable economic growth

MAY 2024

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Finance Bill 2024 Insights

Introduction

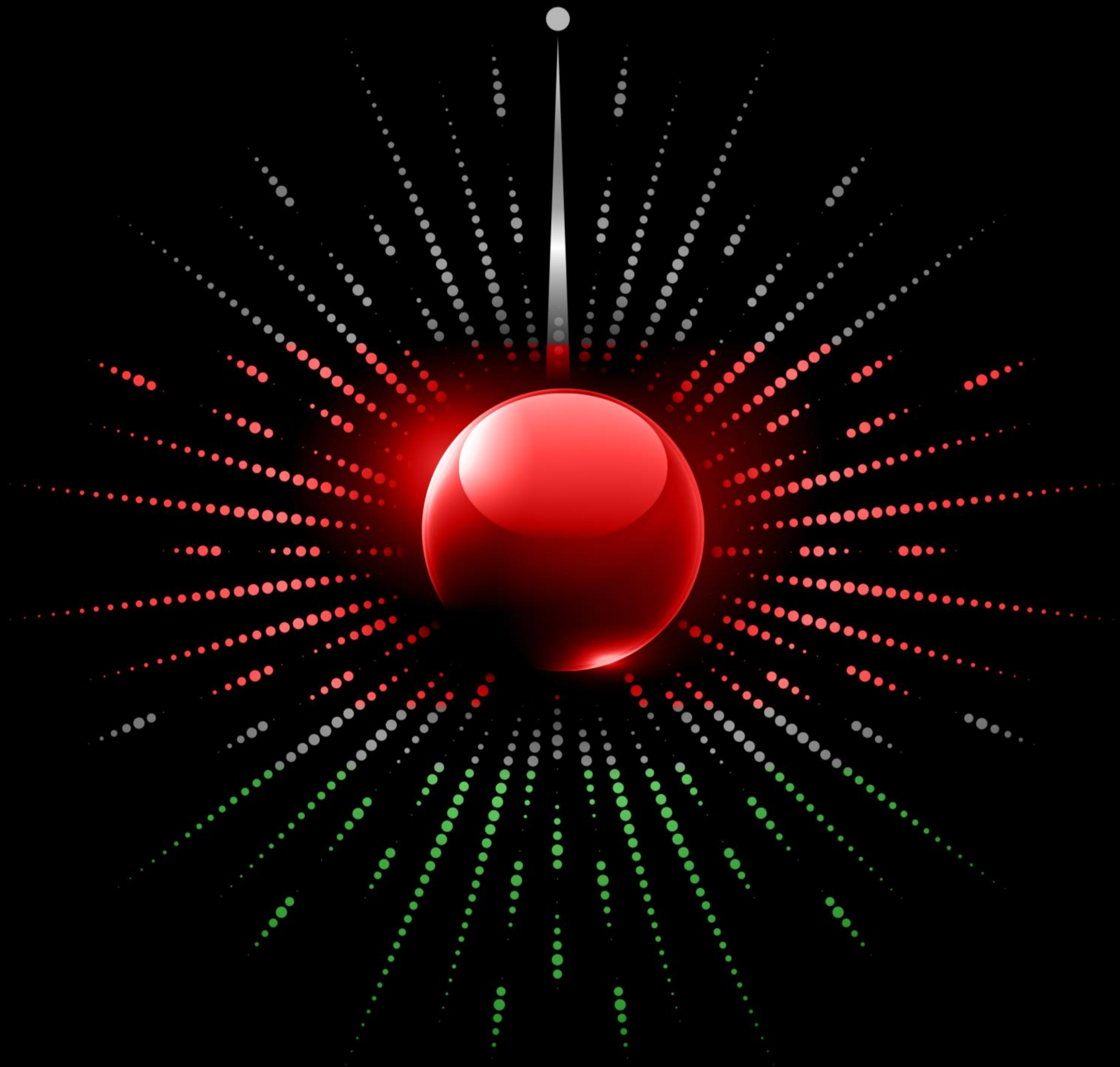
The Finance Bill, 2024 (“the Bill”) was published on **9th May 2024** and tabled in Parliament for the first reading on **13th May 2024**. The Bill has proposed a raft of changes and amendments to the various tax statutes in Kenya, and other related laws.

The proposed tax measures paint a picture of a Government that is keen to expand tax revenue collection through introduction of new taxes and removal of tax exemptions. The measures have sparked a lot of debate from the public, with many quarters contending that the general increase in taxes will be detrimental to the interest of the ordinary Kenyan.

The National Assembly’s Departmental Committee on Finance and National Planning has invited the public to submit comments on the Bill by **Tuesday, 28th May 2024** before it is approved by Parliament and assented into law by 30th June 2024. Kenyans and other stakeholders have an opportunity, as provided for in the Constitution, to submit their views on the proposals in the Bill before it is enacted into law.

This publication provides a detailed analysis of the amendments proposed in the Bill and their economic and fiscal impact. We will provide an updated publication once the Bill is enacted.

Corporate Tax



Corporate Tax

We outline the key corporate tax proposals below.

#	Proposed change	Details	Our comments
1.	Introduction of motor vehicle tax	• The Bill proposes to introduce Section 12H to the ITA, which introduces a tax known as motor vehicle tax at 2.5% of the value of a motor vehicle. • The tax shall be payable at the time of issuance of an insurance cover. • The amount payable shall not be less than KES 5,000 and not more than KES 100,000. • The value of the motor vehicle is to be determined based on the make, model, engine capacity in cubic centimeters and the year of manufacture of the vehicle. The Commissioner may come up with guidelines for purposes of valuation of motor vehicles. • The tax shall be collected by the insurer and remitted to the Commissioner within five working days after issuance of an insurance cover failure to which the insurer will be liable to a late payment penalty equivalent to 50% of the uncollected tax. • Ambulances and vehicles owned by the County and National Government, Kenya Defense Forces, Kenya Police Service, National Intelligence Service or persons exempt from tax by Privileges and Immunities Act shall be exempted from the tax. Effective date: 1 July 2024	• The main motivation behind the proposal to introduce motor-vehicle tax appears to be to grow tax revenue. • The tax comes barely a year after an increase in motor-vehicle advance tax that was introduced by the Finance Act, 2023 on commercial vehicles. • Operators of public service vehicles (PSVs) may likely transfer the tax to commuters by increasing fares while transporters may increase the cost of transportation, effectively impacting the cost of doing business in the country. • The tax could potentially hurt the insurance sector, whose penetration in the country is a paltry 5%. Appointing insurers to be responsible for the collection of the tax also introduces an additional administration burden to the insurers and may likely discourage investors to the sector. • The motor vehicle tax rate is quite high and may need to be reviewed downwards if not abandoned altogether. Furthermore, leaving the valuation to the Commissioner is likely to lead to higher values (and higher tax) as the Commissioner may be inclined to adopt values that are higher than the insured value.

Corporate Tax

#	Proposed change	Details	Our comments
2.	No deduction of deferred foreign exchange losses will be made after 3 years from the year of realization	• The Bill proposes to amend Section 4A of the Income Tax Act (ITA) to reduce the period within which a person may claim a deduction of deferred foreign exchange losses realized by a person whose gross interest paid or payable to a non-resident person exceeds 30% of the company's Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA). • Currently, the deduction is claimable within 5 years from the year of income in which the realization is made. However, the Bill proposes to reduce this to 3 years. Effective date: 1 July 2024	• The proposed change comes barely a year after the Finance Act, 2023 introduced the five-year period within which a person can claim a deduction of deferred foreign exchange losses. • The three-year period had been proposed in the Finance Bill, 2023 but was increased to five years in the Finance Act after being found to be unreasonable. • We believe the motivation to reduce the period from 5 years to 3 years is to align the period to that of interest. Worth noting is that the Finance Act, 2023 introduced a three-year period within which one can claim a deduction of interest from foreign loans that may have been disallowed because of breaching the 30% EBITDA threshold. • Frequent changes in tax law provisions (some barely a year after their introduction) usually creates a lot of uncertainty regarding the application of the law. This trend needs to be checked to ensure policy predictability and stability for ease of doing business.

Corporate Tax

#	Proposed change	Details	Our comments
3.	Taxation of income arising from the supply of goods to a public entity	• The Bill proposes to introduce Section 4C to the ITA, which stipulates that income received by a person from a public entity for the supply of goods shall be deemed to be the income of the person for the year of income in which the **payment** is received. • The Bill also proposes to introduce withholding tax on payments for supply of goods to a public entity. The resident withholding tax rate shall be 3% while the non-resident rate shall be 5%. • "Public entity" has been defined to mean a ministry, state department, state corporation, county government or agency of the national or county government. Effective date: 1 July 2024	• The income tax framework for Kenya follows the accounting treatment, unless stated otherwise. Kenya's accounting reporting is based on IFRS, which requires revenue to be recognized on performance, rather than on actual receipt of payment. • Suppliers of goods and services to public entities have for long faced delays in payment. This makes them to use their own finances to pay tax, as the income would have been recognized on performance of the contract and not receipt of payment. This has discouraged businesses from doing business with public entities and the proposal is therefore welcome. However, as the proposal does not cover services, suppliers of services to public entities would still be required to account for tax on income whose payment is yet to be received and may therefore need to be considered before enactment of the provision. • The proposal to introduce withholding tax on payments for supply of goods to public entities could also be aimed at increasing tax compliance, as the Kenya Revenue Authority (KRA) would be able to track the income earned by suppliers of goods to public entities. However, for low margin or loss-making businesses, the withholding tax may be disadvantageous as it may result in overpayment of taxes which may tie their cashflows until the overpayment is recovered.

Corporate Tax

#	Proposed change	Details	Our comments
4.	Deductible threshold for pension contributions increased	• The Bill proposes to amend Section 22A of the ITA to increase the deductible threshold for contributions made to registered pension or provident funds on behalf of employees from KES 240,000 per year or KES 20,000 per month to KES 360,000 in a year or KES 30,000 per month. **Effective date: 1 July 2024**	• The deductibility of pension costs for the employer depends on the contribution made by the employee. Where the contribution by the employee equals or exceeds the deductible threshold, anything the employer contributes is not allowable. However, if the contribution by the employee is below the deductible threshold, the employer is allowed to claim a deduction of the difference. • This is a welcome proposal, as it will invigorate contributions to retirement pension or provident funds by employees while incentivizing employers who make parallel contributions for their employees with a higher tax deductibility threshold. However, considering that it has taken a long time to review this threshold one would have expected a much higher threshold taking into account increased pension contributions under the new NSSF provisions.
5.	Freight tax to be increased from 2.5% to 3%	• The Bill proposes to increase the freight tax applicable on the income of non-resident shipowners or operators of ships or aircraft that call at any port or airport in Kenya from 2.5% to 3%. • The tax shall apply only where there is no reciprocal arrangement or treaty. **Effective date: 1 July 2024**	• The taxation of income attributable to a non-resident person who carries on the business of a shipowner or air transport operator where the vessel or aircraft docks at any port or airport in Kenya is covered under Section 9(1) of the ITA. As currently worded, the ITA does not seem to exempt shipowners or operators of aircraft even where there is a reciprocal arrangement or treaty. The proposal in the Bill therefore clarifies that the tax shall only apply where there is no reciprocal arrangement or treaty. • The proposal to increase the tax from 2.5% to 3% seems to be aimed at increasing tax revenue. The proposal could be counterproductive, as it may lead to increased freight costs.

Corporate Tax

#	Proposed change	Details	Our comments
6.	Capital allowance on spectrum license	• The Bill is proposing an introduction of investment allowance at 10% p.a. on the purchase or acquisition of a spectrum license by a telecommunication operator. • The allowance on spectrum license purchased or acquired before 1 July 2024 shall be restricted to the unamortised portion over the remaining useful life. **Effective date: 1 July 2024**	• A spectrum license is permission given by a government agency (such as the Communication Authority of Kenya) to an entity that gives that entity exclusive rights to use a frequency band for a particular application, such as radio broadcasting. • Telecommunication operators are required to pay a material upfront cost for the license, which they amortize over the applicable period. The treatment of spectrum license has been subject to disputes been the Kenya Revenue Authority (KRA) and telecommunication operators, with the KRA insisting that it is a capital expenditure, and therefore, not eligible for deduction. • The proposal to introduce investment allowance on spectrum licenses therefore means that the cost shall be claimed for tax purposes over a 10-year period, which is a welcome move.
7.	Enhanced allowance of 150% on bulk storage facilities scrapped	• The Bill proposes to delete Section 133(6) of the ITA, which is a transitional provision that allowed Paragraph 24E of the repealed Second Schedule to the ITA to continue to apply. • Paragraph 24E was introduced to the ITA with effect from 18 March 2020 by the Business Laws (Amendment) Act, 2020 and prescribed an investment deduction of 150% to a person who incurs capital expenditure of at least KES 5 billion on the construction of bulk storage and handling facilities of at least 100 metric tonnes storage capacity for supporting the Standard Gauge Railway operations. **Effective date: 1 July 2024**	• Paragraph 24E was deleted by the Tax Laws Amendment Act, 2020, barely a month after its introduction following the replacement of the entire Second Schedule, hence the need for the transitional provision, as the incentive had hardly served its purpose. The transitional provision has been extended several times, the most recent being through the Finance Act, 2023, which extended the provision to 31 December 2024. • With the deletion of the transitional provision, the normal allowances specified in the current Second Schedule shall apply.

Corporate Tax

#	Proposed change	Details	Our comments
8.	Diminution allowance for small assets to be re-introduced	• The Bill proposes to introduce Section 15(2)(gb) to the ITA to provide for a deduction of amounts representing the diminution in value of any implement, utensil or similar article not granted investment allowance under the Second Schedule at the rate of 100% of the cost incurred to acquire the items. Effective date: 1 July 2024	• A similar provision existed in the ITA prior to the Finance Act 2023. The provision allowed a deduction in respect of an amount representing the diminution in value of any implement, utensil or similar article that the Commissioner would consider to be just and reasonable. • The Finance Bill, 2023 proposed to delete the provision and introduce a similar provision to what the Finance Bill, 2024 is proposing. However, while the provision that allowed a deduction for amounts the Commissioner would consider to be just and reasonable was deleted upon enactment of the Finance Act, 2023, the provision that stipulated the 100% rate was not enacted, signifying a possible drafting error. • The proposed amendment removes subjectivity on the diminution claim, as what the Commissioner would consider to be just and reasonable could be subjective. • The proposal will also simplify the computation of diminution allowance while at the same time aligning the allowance to the accounting useful life of small assets.

Corporate Tax

#	Proposed change	Details	Our comments
9.	Application for change of the accounting year end change to be deemed allowed if the Commissioner fails to issue decision within 6 months	• The Bill proposes to amend Section 27 of the ITA to deem as allowed an application to change the accounting year-end if the Commissioner fails to issue a decision within six months from the date of receipt of the said application. **Effective date: 1 July 2024**	• This is a welcome proposal, as it serves to cushion taxpayers against disenfranchisement from administrative bottlenecks from the Commissioner's end. • We hope that the iTax system will also be reconfigured to automatically deem an application to have been allowed in line with the proposed amendment. Usually, amendments of taxpayer details on iTax require the Commissioner's intervention.
10.	Amendment to Section 34	• The Bill proposes to repeal Section 34 of the ITA and replace it with the following provisions: 1) *The tax chargeable on any income in this Act shall be at the rate specified in the Third Schedule;* 2) *Subsection to subsection 1), the transfer of interest in a person shall be charged in accordance with the Ninth Schedule.* **Effective date: 1 July 2024**	• The proposed change may have been aimed at cleaning up Section 34 to avoid duplication, as the rates of tax are already stipulated in the Third and Ninth Schedules. • However, the change may have some unforeseen consequences on the taxation of certain incomes such as dividend income and qualifying interest to resident persons. Section 34 currently provides for dividend to be taxed at the resident withholding tax rate (5% for qualifying interest and 10% in any other case) and qualifying interest to be taxed at the qualifying interest rate of tax, currently at 15%. All these are taxed through a withholding tax (WHT) mechanism, hence, WHT is final tax. With the proposed amendments to Section 34, the WHT ceases to be final, hence dividend income and qualifying interest become taxable at the normal individual tax rates. Therefore, the impact of this proposal needs to be considered before enactment.

Corporate Tax

#	Proposed change	Details	Our comments
11.	Interest on 3-year and above infrastructure and social services bonds, notes and similar securities issued after 30 June 2024 to be taxable	• The Bill proposes to amend Paragraph 51 of the ITA by including a proviso that limits the applicability of the tax exemption of interest income arising from bonds, notes, or other similar securities used to raise funds for infrastructure and other social services to the income accruing from bonds, notes, or other similar securities used to raise funds for infrastructure and other social services listed before the commencement of the proviso. • There is a similar proposal to amend paragraph 60 of the ITA to limit the tax exemption of interest to 3-year and above bonds, notes and similar securities issued before 1 July 2024 used to raise funds for infrastructure and any other social services, projects and assets defined under Green Bonds Standards and Guidelines. **Effective date: 1 July 2024**	• Currently, interest income arising from bonds, notes and similar securities with maturity periods of 3 years and above used to raise funds for infrastructure and social other social services is exempt from tax. • Similarly, interest income arising from any bond, note and similar security used to raise funds for infrastructure and any other social services, projects and assets defined under Green Bonds Standards and Guidelines is exempt from tax. • The proposal may be aimed at increasing tax revenue. • The proposal may make infrastructure and social services bonds, notes and securities less attractive for investors, potentially reducing subscription rates.
12.	Limitation on the exemption of the income of non-residents that implement fully funded projects	• The Bill proposes to amend paragraph 71 of the First Schedule to the ITA to limit the tax exemption on the income of non-resident contractors, subcontractors, consultants or employees involved in the implementation of projects fully-funded by grants under an agreement between the government and a development partner to income that is directly related to the project. **Effective date: 1 July 2024**	• This proposal aims to bring to tax any other income of a non-resident that is not directly related to the implementation of a fully-funded project. This may include interest income.

Corporate Tax

#	Proposed change	Details	Our comments
13.	Income of amateur sporting associations to be taxable	• The Finance Bill proposes to repeal paragraph 6 of the First Schedule to the ITA, effectively rendering the income of amateur sporting associations taxable. **Effective date: 1 July 2024**	• Although this proposal is in line with the objective of increasing national revenue through taxation and widening of the tax net, it may discourage investment in the amateur sporting sector, as well as lead to reduced subscription by taxpayers in such associations, ultimately culminating in a diminution of revenues reported.
14.	Deletion of tax exemptions relating to registered trust schemes and registered family trusts	• The Bill proposes to delete tax exemptions on the following incomes: - The income of a registered trust scheme; - The income or principal sum of a registered family trust; and - Any capital gains relating to the transfer of title of immovable property to a family trust. **Effective date: 1 July 2024**	• Registered trust schemes and registered family trusts are mainly used for succession purposes. • These proposals will make such structures unattractive, and their use for succession purposes may significantly be reduced.
15.	Repeal of Section 72C	• The Bill proposes to repeal Section 72C of the ITA, which stipulates the penalty for underpayment of instalment tax. The penalty is computed as 20% of the difference between the amount of instalment tax payable for a given year and the instalment tax paid multiplied by 110%. The effect of this provision is that it provides for a 10% margin of error on instalment tax estimation. • Section 72C also empowers the Commissioner to remit the instalment tax penalty if the underpayment is due to a reasonable cause. **Effective date: 1 July 2024**	• The proposal to repeal Section 72C from the ITA means the penalties for underpayment of instalment tax will default to those under the Tax Procedures Act ("TPA"), i.e., 5% of the tax involved. KRA's iTax system already applies the penalty under the TPA, meaning the proposed amendment may just be a clean-up process. • Repeal of Section 72C (2) that gives the Commissioner power to remit penalties is in line with the changes introduced by the Finance Act, 2023 that abolished the Commissioner's powers to abandon and waive penalties.

Corporate Tax

#	Proposed change	Details	Our comments
16.	Amendments to the specified income sources regime	• The Bill proposes to amend Section 15(7)(a) of the ITA by deleting the word “seven” in reference to the number of specified income sources under section 15(7)e) of the ITA. **Effective date: 1 July 2024**	• This proposal may have been informed by various recent changes either adding or deleting the number of specified income sources to Section 15(7) of the ITA. The Finance Act, 2023 for instance deleted “wife’s employment and professional income” from being considered as specified income sources. The move pre-empts further changes to the number whenever the list of specified income sources is altered.
17.	Deletion of the definition of “gross investment receipts”	• The Finance Act, 2024 proposes delete the definition of “gross investment receipts” in Section 21 (3) of the ITA. **Effective date: 1 July 2024**	• The Finance Act, 2023 introduced a regime that deems members’ clubs or trade associations to be carrying on business. Their taxable income is their gross revenue receipts (excluding joining fees, welfare contributions and subscriptions). Previously, where not less than three-quarters of the gross revenue receipts of a member’s club, <u>other than gross investment receipts</u>, was from the members of the club, the club would not be deemed to be carrying on business and its gross revenue receipts, other than gross investment receipts, would not be taxable. • With the change in the tax regime of a member’s club, the definition of “gross investment receipts” in the ITA may have been considered redundant, hence, the proposed deletion.
18.	Deletion of the tax exemption on the income of the National Housing Development Fund	• The Bill proposes to delete Paragraph 57 of the First Schedule to the ITA, which provides for tax exemption of the income of the National Housing Development Fund (“NHDF”). **Effective date: 1 July 2024**	• Introduced in 2018 under Section 6 (1) of the Housing Act since enactment of the Housing Fund section in 1967, the main objective of the NHDF was to provide affordable finance solutions for homeowners for purchase of affordable homes. • The government was banking on NHDF to receive housing levy contributions. However, the levy was changed to a tax and the KRA is now mandated to collect the amount on behalf of the government. Deletion of the tax exemption of NHDF from the ITA is therefore a clean-up process.

Corporate Tax

#	Proposed change	Details	Our comments
19.	Definition of donation	• The Bill proposes to introduce a definition of *"donation" to mean "a benefit in money in any form, promissory note or a benefit in kind conferred on a person without any consideration".* Effective date: 1 July 2024	• The definition clarifies that donations don't have to be in cash to qualify for deduction. What matters is whether the criteria for deductibility as per the ITA is met.
20.	Definition of related person	• The Bill proposes to delete the definition of related person under Section 2 and substitute it with the following: *A related person in case of two persons means, either person who participates directly or indirectly in the management, control, or capital of the business of the other person,* - *Any other person who participates directly or indirectly in the management, control or capital of the business of the two persons,* - *An individual who* *a) participates directly or indirectly in the management, control or capital of the business of the two persons; and* *b) Is associated to the two persons by marriage, consanguinity, or affinity and the two persons participate in the management, control, or capital of the business of the individual.* Effective date 1 July 2024	• The provision being repealed under Section 2 was introduced by the Finance Act 2023. In our view, the amendment is aimed at aligning the definition of related persons to the definition of related person under Section 18 (6) which has now been deleted.

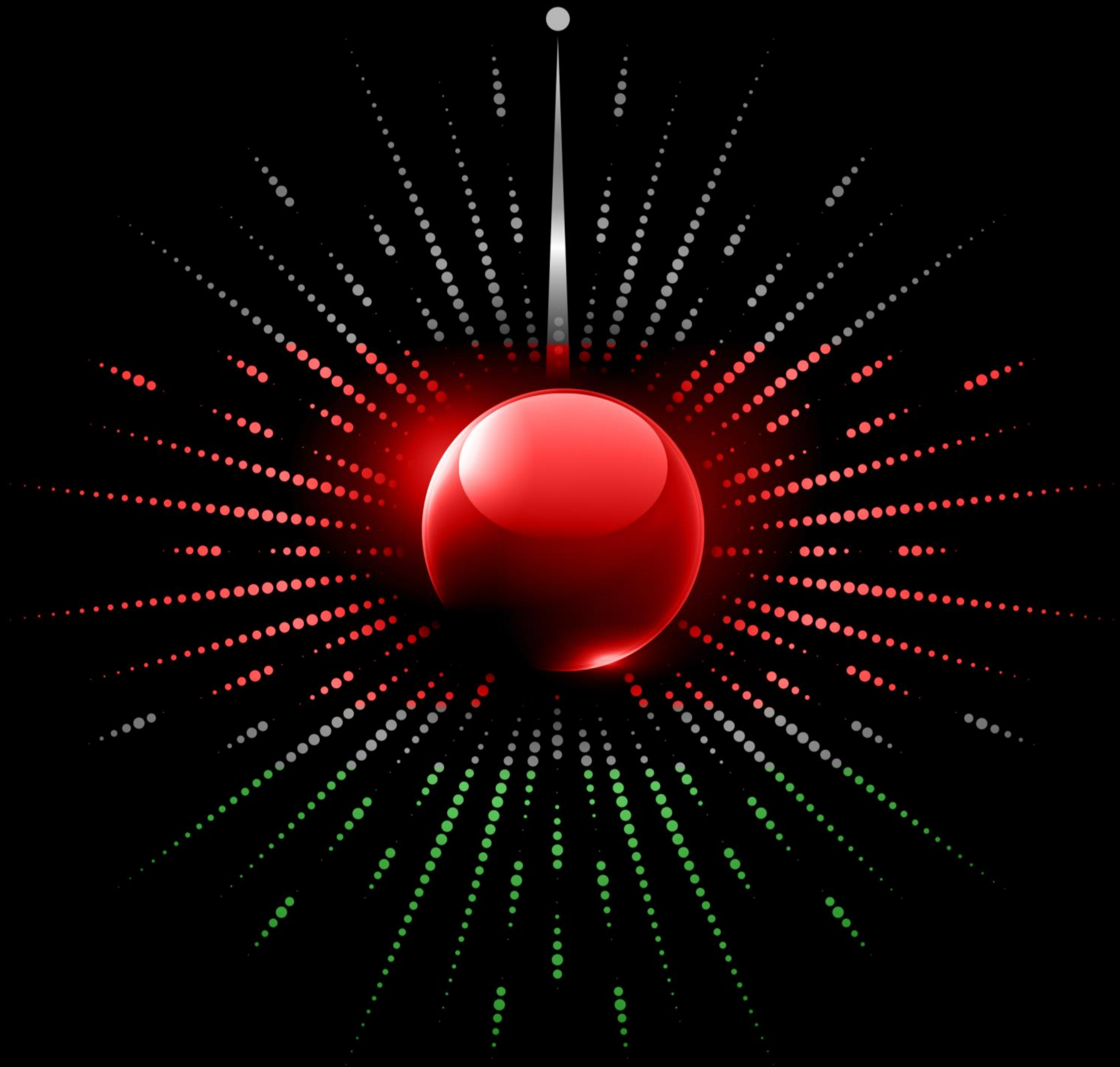
Corporate Tax

#	Proposed change	Details	Our comments
21.	Introduction of Advance Pricing Agreements	• The Bill proposes to introduce Advance Pricing Agreements (APAs) under Section 18G of the Income Tax Act. • An APA allows a taxpayer to agree the appropriate criteria for the determination of the arm's length for future-controlled transactions over a fixed period. The Bill proposes a period not exceeding 5 years. • Where the Commissioner determines that the APA was entered based on misrepresentation of facts, the Commissioner is at liberty to declare the agreement to be null and void from the date the agreement was entered into. Effective date: 1 January 2025	• This is a welcome move as it may reduce transfer pricing disputes by enabling taxpayers to enter into binding agreements with the KRA on the determination of transfer prices. • APAs are becoming increasingly popular worldwide as they provide taxpayers with some level of certainty regarding their transfer pricing arrangements. It is also beneficial to the revenue authority because APAs contrasts with traditional audit techniques that look to whether transactions, which have already taken place, reflect the application of the arm's length principle. • We anticipate further guidance on the APA process, documentation required, and the administrative procedures around execution of the APAs. Clarity of the application process and the requirements for filing for APAs will encourage taxpayers to pursue the APAs.

Corporate Tax

#	Proposed change	Details	Our comments
22.	Introduction of Minimum top-up tax (Pillar 2)	• The Finance Bill proposes to introduce a minimum top up tax payable by a covered person whose combined effective tax rate in the year of income is less than 15%. • *A covered person has been defined as a resident person or a person with a permanent establishment in Kenya who is a member of a multinational group, and the group has a consolidated annual turnover of 750M Euros or more in the consolidated financial statements of the ultimate parent entity in at least two of the four years of income immediately preceding the tested year of income.* • The bill provides that the effective tax rate for the covered person shall be: $\frac{\text{Sum of all the adjusted covered taxes} \times 100}{\text{Sum of all net income or loss for year of income}}$ • The adjusted covered taxes have been defined to include taxes recorded in the financial accounts of a constituent entity for the income, profits or share of the income or profits of a constituent entity where the constituent entity owns an interest and includes taxes on distributed profits, deemed profit distributions under this Act subject to such adjustments as may be prescribed. • Net income or loss has been defined to mean the net income or loss for the year after deducting the sum of losses of a covered person as determined under the recognized accounting standards in Kenya. • This provision shall not apply to public entity not engaged in business, entities exempt under first schedule, sovereign wealth funds, pension funds among other. **Effective date: 1 January 2025**	• This proposal seeks to align our law with the Global Anti-Base Erosion Rules (GloBE Rules) spearheaded by the Organization for the Economic Cooperation and Development (OECD) with the aim of ensuring that multinationals pay a minimum effective corporate tax rate of 15% in all the countries they operate (Pillar 2). • Under the GloBE Rules the “top-up tax” is calculated and applied at a jurisdictional level using a standardized base and definition of covered taxes to identify those jurisdictions where an MNE is subject to an effective tax rate below 15%. • If this proposal is adopted into law, large multinational entities with operations in Kenya will be required to monitor their effective tax rates on their operations to ensure compliance with the minimum top-up tax requirement.

Withholding Tax



Withholding Tax

We outline the key withholding tax proposals below.

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<tr><th>#</th><th>Proposed change</th><th>Details</th><th>Our comments</th></tr>
<tr><td>1.</td><td>Owners or operators of digital marketplaces or platforms through which payments are made or facilitated to withhold tax on the payments</td><td>

The Bill proposes to introduce a withholding tax obligation to the owner or operator of a digital marketplace or platform through which payments in respect of digital content monetisation, goods, property or services are made or facilitated.
The withholding tax rates shall be 5% for resident payments and 20% for non-resident payments.
The Bill defines “digital marketplace”, and “platform” as follows:

“Digital marketplace” means an online or electronic platform which enables a person to sell or provide services including:-
a) ride-hailing services;
b) food delivery services;
c) freelance services;
d) professional services;
e) rental services;
f) task-based services; and
g) any other service that is not exempt from tax under the ITA.
“Platform” means a digital platform or website that facilitates the exchange of a short-term engagement, freelance or provision of a service, between a service provider, who is an independent contractor or freelancer, and a client or customer.

The existing definition of digital marketplace in Sec 3(3)(ba) of the ITA is to be deleted.

Effective date: 1 July 2024
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This measure will create an administrative burden to owners or operators of digital marketplaces or platforms, as they will be required to comply with the deduction and remittance of withholding tax whenever a payment is made or facilitated through their platforms.
This measure is targeted at sectors of the digital economy that have witnessed growth in the recent past and where tax compliance is perceived to be low with a view to net more taxes from especially individuals engaged in such businesses.
Non-resident owners or operators of digital marketplaces or platforms may be required to register for tax in Kenya in order to comply with the obligation. We expect the government to issue guidelines on how they should register in case they are not already registered under the simplified tax registration framework that is in use for purposes of Digital Service Tax (DST), Digital Asset Tax (DAT) and the VAT obligation on digital marketplace supplies (DMS).
The withholding tax on payments for goods, property or services may lead a backlog of refunds, especially for low-margin goods and services, as the withholding tax deducted may exceed the income tax payable and result into negative cashflow impact or even higher pricing.

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Withholding Tax

#	Proposed change	Details	Our comments
2.	Digital content monetization scope expanded	• The Bill proposes to expand the definition of digital content monetization in the ITA to include the offering of (i) creative works, (ii) creating or sharing of the material or (iii) any other material that is not exempt under the ITA, for payment electronically through any medium or channel. **Effective date: 1 July 2024**	• This measure aims to expand the scope of transactions subject to withholding tax and thereby collect more tax. • Withholding tax on digital content monetization was introduced through the Finance Act 2023 at 5% for resident payments and 20% for non-resident payments. • With the proposal to also introduce a withholding tax obligation on owners or operators of digital marketplaces or platforms through which payments in respect of digital content monetisation, goods, property or services are made, the proposal to include more transactions in the digital content monetisation scope will see owners or operators of digital marketplaces or platforms withhold tax on such payments if the same would not be eligible for deduction by the user of the service.
3.	Supply of goods to public entities to attract withholding tax	• The Bill proposes to amend Section 35 of the ITA and introduce payments for the supply of goods to public entities within the ambit of withholding tax. • The resident withholding tax rate shall be 3% while the non-resident rate shall be 5%. • "Public entity" has been defined to mean a ministry, state department, state corporation, county government or agency of the national or county government. **Effective date: 1 July 2024**	• The proposal to introduce withholding tax on payments for supply of goods to public entities could be aimed at increasing tax compliance, as the Kenya Revenue Authority (KRA) would be able to track the income earned by suppliers of goods to public entities. • Resident suppliers of low margin goods to public entities may end up in perpetual tax credits where the withholding tax credits from the supply of the goods exceed their income tax liability. On the other hand, non-residents may likely enter into net-of tax agreements with public entities to protect their margins, effectively increasing the price of the goods.

Withholding Tax

#	Proposed change	Details	Our comments
4.	All software related payments to attract withholding tax	• The Bill proposes to delete the current definition of royalty in Section 2 of the ITA and substitute it with the following definition: *"royalty" means a payment made as a consideration for the use or the right to use* *a) Any copyright of a literary, artistic or scientific work;* *b) Any software, proprietary or off-the-shelf, whether in the form of licence, development, training, maintenance or support fees and includes the distribution of the software;* *c) Any cinematograph film, including a film, or tape for radio or television broadcasting;* *d) Any patent, trademark, design or model, plan, formula or process;* *e) Any industrial, commercial or scientific equipment;* *f) Information concerning industrial, commercial or scientific equipment or experience, and any gains derived from the sale or exchange of any right or property giving rise to that royalty.* Effective date: 1 July 2024	• The main change in the proposed definition is the inclusion of payments for use or the right to use *"any software, proprietary or off the shelf, whether in the form of licence, development, training, maintenance or support fees and includes the distribution of software"* to be a "royalty". • Essentially, all software-related payments will qualify as royalties, hence attract withholding tax at 5% for residents and 20% for non-residents. • The expanded definition of "royalty" deviates from the globally accepted definition of "royalty" that borrows heavily from the OECD's rights-based approach under which only payments for the use of, or the right to use, copyrights qualify as royalties. Payments for copyrighted products (such as off-the-shelf or pre-packaged software) do not qualify as royalties under OECD's rights-based approach. • The proposed amendments may have been informed by recent rulings where KRA's interpretation of "royalty" with respect to software payments has been challenged. • An unforeseen consequence of including any software related-payment as "royalty" would be that payments that software payments would ordinarily have qualified for digital service tax (DST) (soon to be replaced with "significant economic presence tax (SEP tax") will fall within the WHT scope, and therefore, be exempt from DST (or the soon to be enacted SEP tax). It will also result into higher prices as non-resident suppliers are likely to pass on the rather steep (20%) withholding tax to the local consumers.

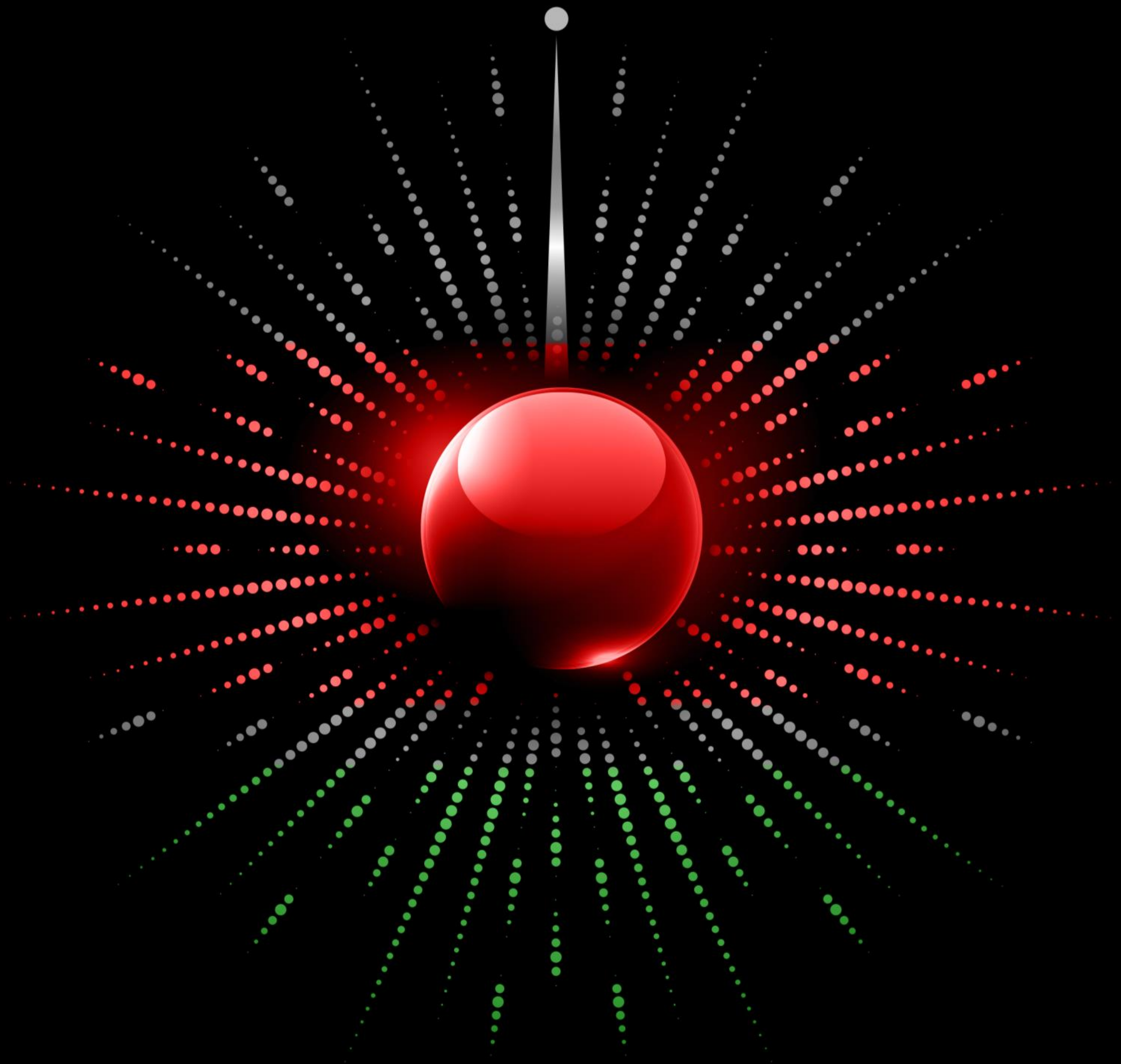
Withholding Tax

#	Proposed change	Details	Our comments
5.	Interest on infrastructure and social services bonds to attract withholding tax	• The Bill proposes to introduce withholding tax on interest arising from any bond, note or other similar security that has a maturity period of at least three years used to raise funds for infrastructure and other social services. • The resident WHT rate shall be 5% while the non-resident rate shall be 15%. Effective date: 1 July 2024	• The proposal to introduce withholding tax on interest arising from infrastructure and social services bonds, notes and similar securities with maturity periods of at least three years follows the proposal to delete the tax exemption on the interest income accruing from such securities where the securities are issued after 30th June 2024. • Interest on existing infrastructure and social services bonds, notes and similar securities with maturity period of at least three years will continue to enjoy the exemption, therefore, will not be subject to withholding tax. • Worth to note is that residents will only be subject to a reduced withholding tax rate of 5% on the interest instead of the normal 15% rate that generally applies on interest. • The proposal to bring to tax interest arising from infrastructure and social services bonds, notes and similar securities with maturity periods of at least three years sends a clear message of a government keen to reduce tax exemptions to as minimum as possible and is consistent with other proposals across the Bill.

Withholding Tax

#	Proposed change	Details	Our comments
6.	The threshold of KES 24,000 for applicability of withholding tax on service fees to be removed	• The Bill proposes to amend Paragraph 5(f)(i) of the Third Schedule to the ITA to remove the threshold of KES 24,000 for applicability of WHT on management, professional and training fees to residents. Effective date: 1 July 2024	• The intention of the proposed change is to remove the threshold for applicability of WHT on management or professional fee payable to residents, just as it has been for non-residents. • Although the intention is clear, we note that the threshold of KES 24,000 has still been maintained in Section 35, which is the section that confers the withholding tax obligation to payers. In our view therefore, the threshold still applies. • The proposal may have been informed by the need for government to track and bring to tax all incomes earned by persons in Kenya, on the back of introducing housing levies and the soon to be introduced contributions to the Social Health Insurance Fund (SHIF), which are all based on the incomes of households in the case of unemployed persons. • It is also possible that this proposal could have been informed by the change introduced by the Finance Act, 2023 regarding the withholding tax remittance timeline to be within 5-working-days, as it is administratively cumbersome to monitor when the threshold is met.

Digital Taxes

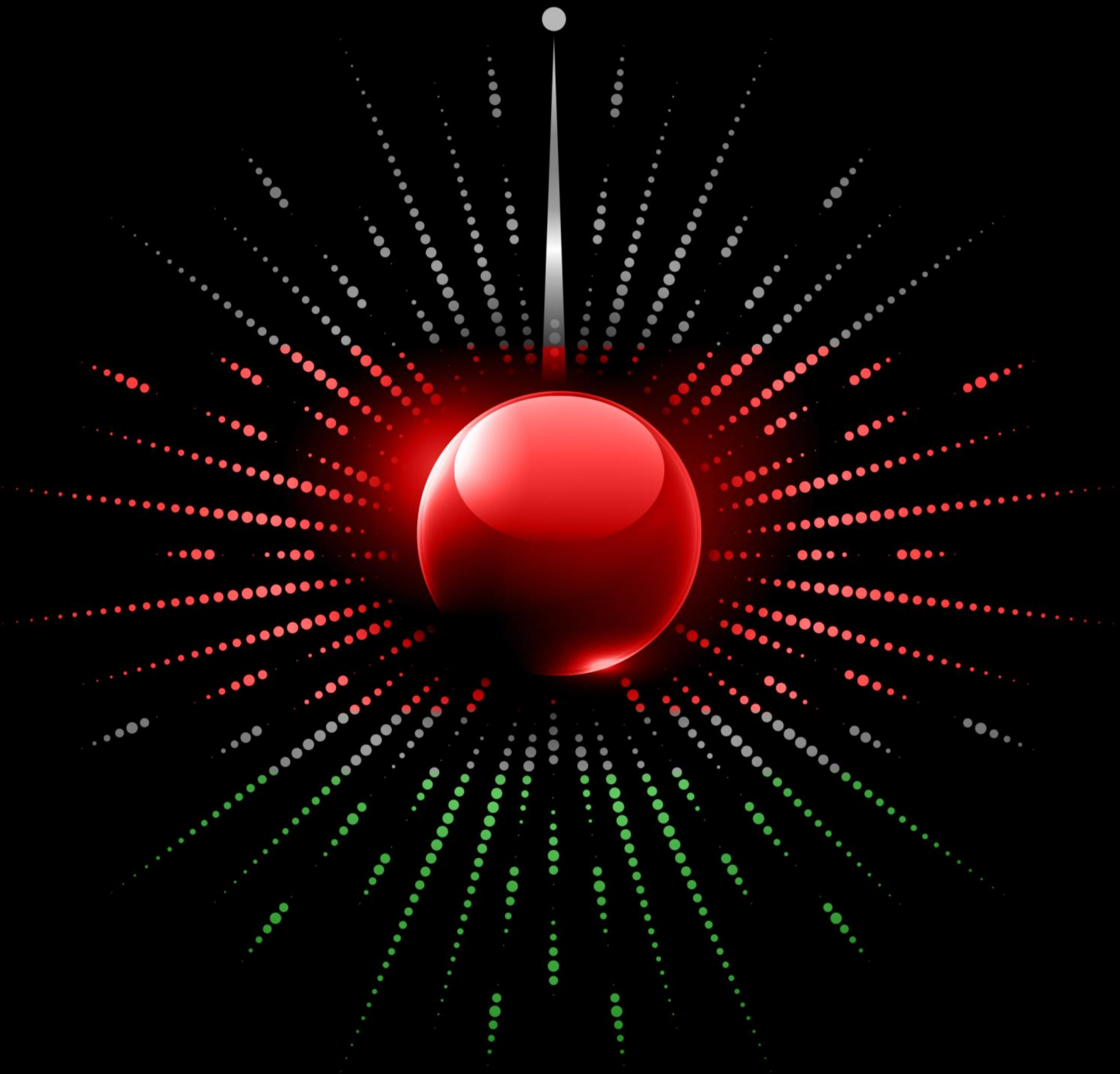


Digital Taxes

The Bill proposes to repeal digital service tax and introduce a new tax known as significant economic presence tax

#	Proposed change	Details	Our comments
1.	Replacement of digital service tax with significant economic presence tax	• The Finance Bill proposes to repeal the digital service tax regime and introduce a new tax known as "Significant economic presence tax", which shall apply on the income derived by a non-resident person from the provision of services through a digital marketplace in Kenya. • Significant economic presence tax shall not apply to: - A non-resident person who offers the services through a permanent establishment ; or - Gains derived from the business of transmitting messages by cable, radio, optical fiber, television broadcasting, Very Small Aperture Terminal (VSAT), internet, satellite or by any other similar method of communication. (i.e., income subject to tax under Section 9(2) of the ITA); and - Income subject to withholding tax. • The taxable profit of a person liable to pay the significant presence tax shall be deemed to be 20% of the gross turnover. The deemed taxable profit shall then be taxed at 30%. Effectively, significant economic presence tax shall be taxable at 6% of the gross turnover. • Persons subject to significant economic presence tax shall be required to submit a tax return and pay the tax due to the Commissioner on or before the 20th day of the month following the end of the month in which the service was rendered. **Effective date: 1 January 2025**	• Significant economic presence (SEP) tax is very similar to digital service tax (DST), with the former attracting a higher effective tax of 6% of the gross turnover and the latter attracting tax at 1.5%. • Kenya joins countries like Nigeria and India that have also introduced SEP tax in their tax regimes. • One of the proposals arising from the Pillar 1 and 2 rules was to abolish unilateral taxes such as digital services taxes. Kenya seems to have heeded this call. However, since the SEP tax is more or less similar to the DST, it would be expected that Kenya should exempt entities that would be covered under Pillar A. this remains to be seen.

Capital Gains Tax



Capital Gains Tax

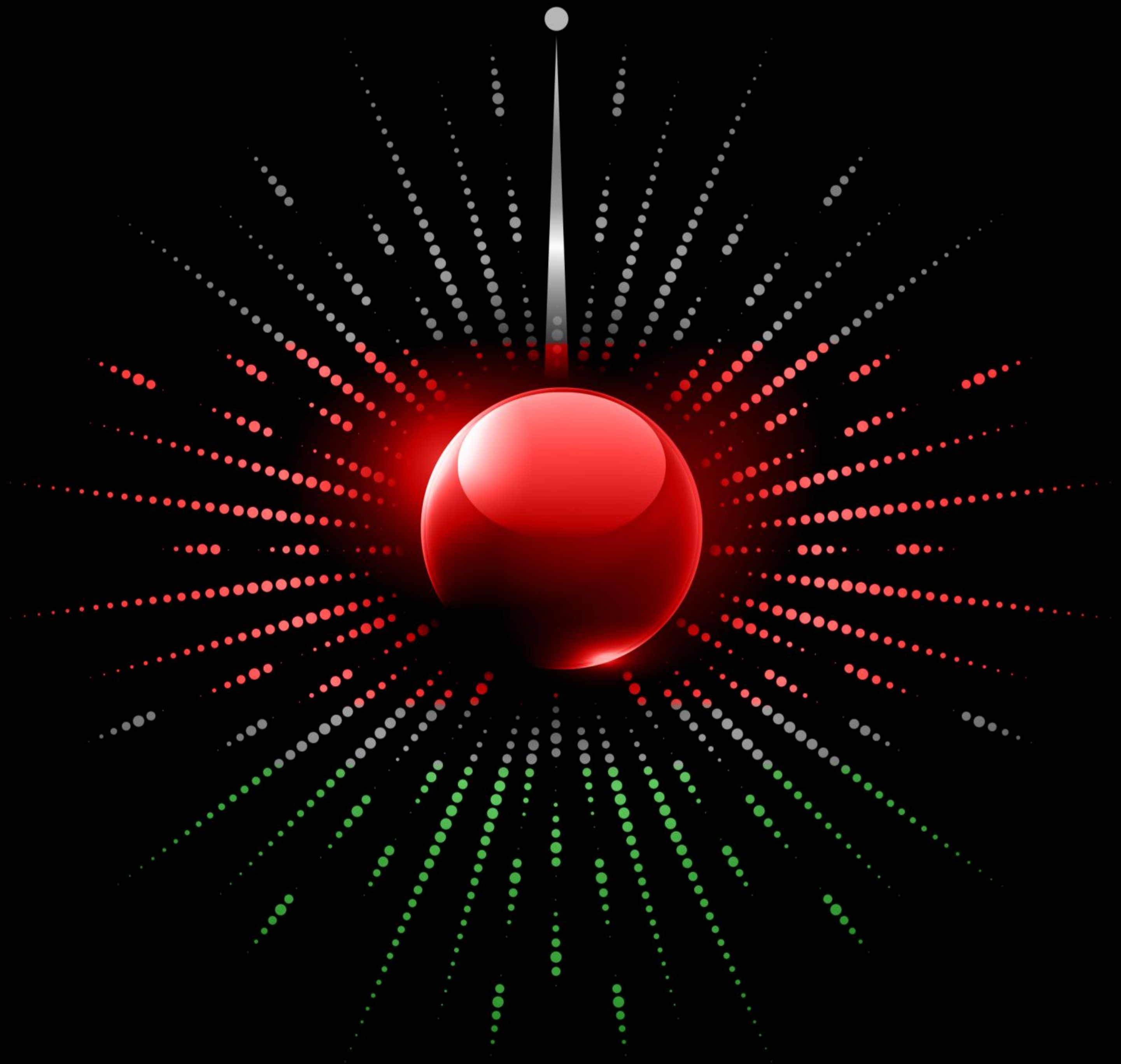
The key changes that affect Capital Gains Tax are as outlined below.

#	Proposed change	Details	Our comments
1.	Definition of company	• The Bill proposes to delete the definition of "company" in the Eighth Schedule to the ITA and substitute it with the following definition: *"company" includes a body of persons which carries on the activities of a members' club or trade association that is deemed to be carrying on a business under section 21.* • Currently, "company" is defined to include: a) a members' club deemed under section 21(1) to be carrying on a business; b) a trade association that elects under section 21(2) to be deemed to carry on a business; Effective date 1 July 2024	• This proposed amendment is aimed at aligning the definition of "company" to the change in the tax regime of a members' club and trade association introduced by the Finance Act, 2023. • Prior to the Finance Act, 2023 change, a trade association was required to elect to the Commissioner to be taxed. Further, a member's club was not considered to be carrying on business where not less than three-quarters of gross receipts on revenue account, other than gross investment receipts, were from the members of the club. • Following the Finance Act 2023 change, "a members' club or trade association are deemed to be carrying on a business and the gross receipts on revenue account (excluding joining fees, welfare contributions and subscriptions) are deemed to be income from a business."
2.	Reduced CGT for companies that have invested at least 3 billion shillings	• The Bill proposes to amend the ITA to provide that a reduced CGT rate of 5% instead of 15% shall apply where the Nairobi International Financial Centre Authority (NIFCA) certifies that: - A firm has invested at least KES 3 billion in one or more entities in Kenya within two years; and - The transfer of the investment is made after 5 years of the date of the investment. Effective date 1 July 2024	• This provision was first introduced by the Finance Act, 2022. However, the wording in the provision was that the CGT rate for such transactions would be the applicable rate at the time of investment, which at the time was 5%, with the same expected to increase to 15% effective 1 January 2023. • With a CGT rate of 15% now, it became necessary to expressly state the reduced rate of 5%. We expect that this proposal shall encourage the set-up of entities under the NIFCA.

Capital Gains Tax

#	Proposed change	Details	Our comments
3.	Exemption of property transfers in a SEZ	• The Bill proposes to amend the ITA to limit the CGT exemption on property transfers within a special economic Zone (SEZ) to transfers made by licensed SEZ entities. Effective date: 1 July 2024	• This proposal is aimed at limiting the exemption to only licensed entities, unlike previously where the exemption was open to any player within a SEZ set up in the country.

Personal Income Tax



Personal Income Tax

We outline the key proposals that affect personal tax below

#	Proposed change	Details	Our comments
1	Additional tax-deductible contributions against personal income	• The Bill seeks to introduce the following allowable deductions under section 15 (2) of the Income Tax Act through the introduction of new paragraphs (ac), (ad) and (ae) respectively; - Contributions made to the Social Health Insurance Fund (SHIF) in accordance with section 27(a) and (b) of the Social Health Insurance Act, 2023; - In the case of an employee, the amount deducted as affordable housing levy in accordance with section 5(1)(a) of the Affordable Housing Act, 2024; and - A contribution to a post-retirement medical fund subject to a limit of ten thousand shillings per month. Effective date 1 July 2024	• The proposed amendment is a welcome move and a relief to employees in the formal sector who over the last few months have witnessed an introduction or increase of deductions leading to a reduction in their net take home. • In addition, to the added tax bands of 32.5% and 35%, some of the recently introduced deductions or levies include; an increase on the National Social Security Fund(NSSF) contributions, introduction of Affordable Housing Levy and the upcoming SHIF contributions effective 1 July 2024. • However, these proposed deductions were previously provided for as tax reliefs even though the relief on affordable housing levy has faced implementation challenges. In our view, retaining these as reliefs would have had a more positive impact on the individuals' disposable incomes especially under the current environment of high cost of living.
2	Increase on allowable deductions for contributions made to registered pension or provident funds	• The Bill proposes to amend sections 22A and 22B of the Income Tax Act by increasing the maximum allowable pension or provident fund deduction against an employee's income from the current KES 240 ,000 per year (KES 20,000 per month) to KES 360,000 per year (KES 30,000 per month) for registered pension funds, provident funds and individual retirement funds. Effective date 1 July 2024	• This is a welcome move even though it has been long overdue, and the new limits should probably be much higher since the current threshold has not been updated for close to two decades despite the steady increase in the level of inflation over the years and the prevailing hard economic times and also taking into account the enhanced contributions under the new NSSF provisions. • However, the increase will partially cushion employees contributing towards retirement savings as they can capitalize on maximizing their pension contributions as they reduce their tax burden.

Personal Income Tax

#	Proposed change	Details	Our comments
3	Increase on the non-taxable limit of per diem	• The Bill seeks to amend Section 5(2)(a) (iii) of the ITA to increase non-taxable limit of amounts received by an employee as payment of subsistence, travelling, entertainment or other allowance, in respect of a period spent outside his/her usual place of work while on official duties from the current KES 2,000 per day to 5% of monthly gross earnings of the employee per day where the employer has a policy on payment and accounting for these allowances. **Effective date 1 July 2024**	• The proposed amendment is a step forward as it aligns with the prevailing economic times and hopefully will also address discrimination between the public and private sector on this employment benefit. Over the years the employees under the public sector have enjoyed the per diem rates as per the Salaries Remuneration Commission's guidelines which are higher than what is prescribed in the ITA. The private sector employees on the other hand have been expected to abide by the rate provided in the ITA. • Additionally, this amendment is important as it will take into consideration the inflation adjustment going forward considering in practice most employees' salaries are reviewed regularly. • However, the proposed amendment may also be viewed as inequitable since the high-income earners will benefit from higher tax free per diem even in situations where they are bearing the same costs.
4	Increase on tax-exempt threshold for meals provided to employees	• The Bill seeks to amend Section 5(4)(f) of the ITA to increase the non-taxable value of meals served to employees in a canteen or cafeteria operated or established by the employer or provided by a third party who is a registered taxpayer (whether the meals are supplied in the premises of the employer or the premises of the third party) from KES 48,000 per year to 60,000 per year. **Effective date 1 July 2024**	• This a welcome proposal as it aligns with the increased cost of living. • In our view, it may be useful for the government to consider a review of this threshold every 2-3 years to keep aligning with the prevailing economic times.

Personal Income Tax

#	Proposed change	Details	Our comments
5	Introduction of tax exemption on reimbursements made to public officers	• The Bill seeks to amend Section 5(4) of the ITA by introducing paragraph (fa) which proposes to exempt from tax amounts paid or granted to public officers as reimbursements for expenditure incurred for the purpose of performing official duties notwithstanding the ownership or control of the assets purchased. Effective date 1 July 2024	• This amendment was previously proposed in the Finance Bill 2023 but dropped after the public participation. • In our view, such a provision if enacted is likely to create an avenue for misuse of public funds since the provision does not restrict ownership or control of the assets purchased using such reimbursements. This is especially where there's no requirement to account for the reimbursements.
6	Increase in the tax-exempt threshold for non- cash benefits	• The Bill seeks to amend Section 5(2)(b) of the ITA to increase the tax-exempt threshold for non-cash benefits not expressly provided for in the ITA from the current KES 36,000 per year to KES 48,000 per year. Effective date 1 July 2024	• This is a positive measure as it will ensure this incentive is in line with the economic realities. • The current threshold has not been revised since 2006 and therefore is not reflective of the ever-increasing cost of living.
7	Increase in owner occupier mortgage interest deduction	• The Bill seeks to amend Section 15(3)(b) of the ITA to increase the mortgage interest deduction against personal income from the current KES 300,000 per year to KES 360,000 per year in respect of money borrowed by an individual from one of the six financial institutions specified in the Fourth Schedule and applied to the purchase or improvement of premises occupied by him/her for residential purposes during that year of income. Effective date 1 July 2024	• This is a welcome proposal since it will partially cushion individuals who have taken mortgages for their residential homes especially with the introduction of housing fund levy and the increases in cost of borrowing. • It may also encourage uptake of mortgages for residential purposes especially under the government's affordable housing scheme thus aligning with the government's agenda on housing. • However, the above increase may still not be sufficient considering the prevailing interest rates on mortgages.

Personal Income Tax

#	Proposed change	Details	Our comments
8.	Tax exemption on retirement benefits from a Pension or provident fund	• The Bill seeks to amend Paragraph 53 of the First Schedule of the ITA by deleting the current tax exemption for monthly pension payments to persons aged 65 years or above and replacing this with a proposal to exempt payment of pension benefits from a registered pension fund, registered provident fund, registered individual retirement fund or National Social Security Fund, made to an individual upon attainment of the retirement age determined in accordance with the rules of the fund. • Provided that this exemption shall also apply where a person; - Retires prior to attaining the retirement age due to ill health; or - Withdraws from the fund after twenty years from the date of registration as a member of the fund. Effective date 1 July 2024	• The amendment aims to address the issue of age discrimination on eligibility for tax exemption on pension benefits received at retirement. • This is a positive action as it will also increase the disposable incomes for individuals upon retirement, or where one is incapacitated due to ill-health and therefore wholly dependent on their retirement savings. • The proposal also aligns with the international best practice of exempting from tax retirement benefits and will also encourage savings for retirement.
9.	Amendment of the definition of registered individual retirement, provident and pension funds	• The Bill proposes to amend the definitions of a registered individual retirement fund under section 2(b) of the ITA to remove the requirement for registration with the Commissioner. Therefore, if enacted, an individual retirement fund will be considered registered for tax purposes where the trust deed for such a fund has been registered with the Retirement Benefits Authority (RBA). • The Bill further, proposes to amend the definitions of "registered pension fund" and "registered provident fund" under the same section by removing the requirement to have them registered with the Commissioner in such manner as may be prescribed for tax deductibility. Effective date 1 July 2024	• The amendment is a welcome change given currently the funds must be registered with the Commissioner appointed through the Kenya Revenue Authority Act in addition to the statutory registration with RBA for the contributors to be eligible for tax deductibility. • The requirement for registration of the retirement funds with the Commissioner for tax purposes has tended to create some ambiguity and duplication of efforts since the statutory registration lies with the Retirement Benefits Authority (RBA). This proposal will eliminate this ambiguity and contribute towards improving ease of doing business.

Personal Income Tax

#	Proposed change	Details	Our comments
10	Registration of remote working employees for Tax PINs	• The Bill seeks to introduce paragraph 16 in the First Schedule to the Tax Procedures Act to provide that employees working remotely outside Kenya for Kenyan employers would be eligible to register for Tax PINs. Effective date 1 July 2024	• This proposal aims to align the tax legislation with the changing nature of work and global mobility trends that have resulted into increase in remote workers. It is likely to increase employment tax compliance by simplifying tax deduction and remittance for taxable remote workers based outside Kenya. • This is also likely to increase PAYE collections for the government especially if it's accompanied by easier registration process not only for tax but for immigration as well. • To achieve the intended objective, this might necessitate the Kenya Revenue Authority (KRA) to ease documentation requirements for obtaining Tax PINs for foreign remote workers.
11	Repeal of exemption on income earned under Ajira Digital Program	• The Bill proposes to delete the tax exemption on income accrued by individuals registered under the Ajira Digital program in accordance with paragraph 58 under the First Schedule of the Income Tax Act. • Currently, income earned by individuals registered under the Ajira Digital Program is exempt from tax for three years effective 1st January 2020 provided that; - The individual makes payment of a registration fee of ten thousand shillings per annum. Effective date 1 July 2024	• This deletion may have been informed by the fact that the program may not have gained traction and therefore not achieved the set objectives as envisaged when it was enacted. • Additionally, this aligns with the government's agenda to increase its revenue collections by streamlining its modes of taxation of income earned through digital platforms.

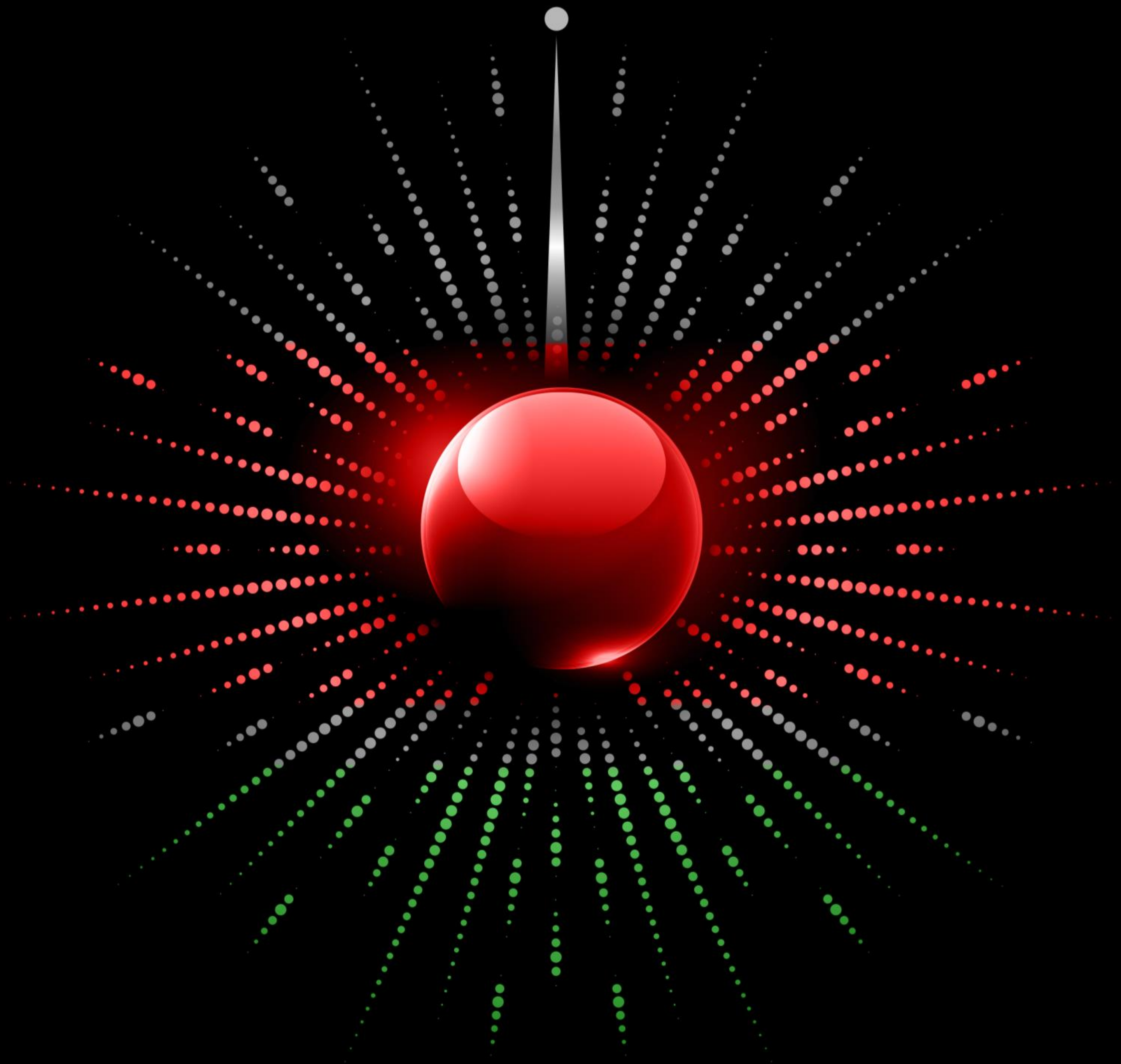
Personal Income Tax

#	Proposed change	Details	Our comments
12	Affordable Housing relief	• The Bill seeks to remove the Affordable Housing relief by repealing Section 30A and paragraph 3 under Head A of the Third Schedule to the ITA. The relief had earlier been introduced through the Tax Laws Amendment Act under the affordable housing agenda by the previous government. Effective date 1 July 2024	• The proposal to repeal the relief is informed by another proposal in this Bill to make housing levy contributions tax deductible. • The move from a tax relief to an allowable deduction appears to be aimed at reducing the negative impact on the PAYE collections considering the government's pressure to increase tax revenue collections to cover our debt repayments as well as continue the development agenda. • This also eliminates the ambiguity currently presented by the non-alignment of the Affordable Housing relief in the Income Tax Act which was for voluntary contributions under the Affordable Housing Scheme introduced in 2018 and the recent Affordable housing levy which is a form of tax and not a contribution.
13	Deletion of the provision of insurance relief on health policies and NHIF contributions	• The Bill proposes to repeal Section 31(1)(v) of the ITA to remove the provision of insurance relief on premiums paid towards health policies and National Health Insurance Fund (NHIF). • In the same breath, it also proposes to remove the relief on post-retirement medical fund contributions by repealing Paragraph 4 under Head A of the Third Schedule to the ITA. Effective date 1 July 2024	• This is guided by the fact that the Bill proposes to make Social Health Insurance Fund contributions and the post-retirement medical fund contributions (up to KES 10,000 p.m.) tax-deductible. • This a positive move as it will to lead to increased disposable incomes for individuals making these contributions.

Personal Income Tax

#	Proposed change	Details	Our comments
14	Affordable Housing relief	• The Bill seeks to remove the Affordable Housing relief by repealing Section 30A and paragraph 3 under Head A of the Third Schedule to the ITA. The relief had earlier been introduced through the Tax Laws Amendment Act under the affordable housing agenda by the previous government. Effective date 1 July 2024	• The proposal to repeal the relief is informed by another proposal in this Bill to make housing levy contributions tax deductible. • The move from a tax relief to an allowable deduction appears to be aimed at reducing the negative impact on the PAYE collections considering the government's pressure to increase tax revenue collections to cover our debt repayments as well as continue the development agenda. • This also eliminates the ambiguity currently presented by the non-alignment of the Affordable Housing relief in the Income Tax Act which was for voluntary contributions under the Affordable Housing Scheme introduced in 2018 and the recent Affordable housing levy which is a form of tax and not a contribution.

Value Added Tax



Value Added Tax

Below is an outline of the key VAT proposals

#	Proposed change	Details	Our comments
1.	Definition of a tax invoice	• The Bill proposes to amend Section 2 of the Value Added Tax Act 2013 ("VAT Act") to define a "tax invoice". • The Bill defines a tax invoice to include an electronic tax invoice issued in accordance with Section 23A of the Tax Procedures Act ("TPA"). **Effective date: 1 July 2024**	• The Finance Act 2023 introduced Section 23A into the TPA, to empower the Commissioner to establish an electronic system for the issuance of electronic tax invoices. • Further, it 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. • The Bill proposes to introduce this definition to clarify that a tax invoice is an invoice issued under the provisions within the TPA, that is a tax invoice should be issued through the Tax Invoice Management System ("TIMS") or e-TIMS systems.
2.	Clarification on place of supply for services provided by non-residents	• The Bill proposes to amend Section 8(2) of the VAT Act by introducing the word "and" at the end of the opening sentence which will read as follows: *(2) If the place of business of the supplier is not in Kenya, the supply of services shall be deemed to be made in Kenya if the recipient of the supply is a registered or unregistered person; and* *a) the services are physically performed in Kenya by a person who is in Kenya at the time of supply.* **Effective date: 1 July 2024**	• The proposed amendment aims to provide clarity on the conditions that ought to be met in order to determine whether the supply of services by non-residents should be deemed to be made in Kenya, if the place of business of the supplier is not in Kenya.

Value Added Tax

#	Proposed change	Details	Our comments
3.	Time of supply for exported goods	• The Bill proposes to amend Section 12 of the VAT Act by introducing subsection 5 on the time of supply for exported goods. • The Bill provides that the time of supply for exported goods shall be the time when the registered person is in possession of the required export confirmation documents. Effective date: 1 July 2024	• Currently, the VAT Act does not provide specific provisions with respect to time of supply of exported goods. • Therefore, for exported goods, reliance is placed on the provisions of Section 12(1) of the VAT Act. • The proposed amendment seeks to enhance taxpayers' compliance with the provisions of Value Added Tax (VAT) Regulations 2017 which provide the list of documentation required as proof of exportation of goods. • This may be informed by the recent focus by KRA on exporters of goods to provide and maintain copies of export documents to demonstrate that the exported goods left Kenya. • The KRA should ensure that the Certificate of export are issued in a timely manner as it is one of the key document that confirms exportation of goods.

Value Added Tax

#	Proposed change	Details	Our comments
12.	Change of VAT Status on various financial services	The Bill proposes to make significant changes to the list of exempt financial services under the First Schedule by proposing to delete the following subparagraphs in Paragraph 1: i. Subparagraph (c) exempts issuing of credit and debit cards; ii. Subparagraph (e) exempts telegraphic money transfer services; iii. Subparagraph (f) exempts foreign exchange transactions, including the supply of foreign drafts and international money orders; iv. Subparagraph (g) exempts cheque handling, processing, clearing and settlement, including special clearance or cancellation of cheques; v. Subparagraph (i) exempts issuance of securities for money, including bills of exchange, promissory notes, money and postal orders; vi. Subparagraph (l) exempts the assignment of a debt for consideration; vii. Subparagraph (m) exempts the provision of the above financial services on behalf of another on a commission basis. Effective date: 1 July 2024	• The proposed changes in the various financial services mentioned will result in the services being subject to VAT at 16% thus increasing the cost of these financial services in Kenya. While the proposal is aimed at raising additional tax revenue, it will be-detrimental to the Government's efforts to make Kenya a financial hub and a gateway to Africa as it will increase the costs of doing business in Kenya. We believe this move, coupled with the increased excise taxes on some financial transactions significantly increases the costs of transactions and may eat into the gains made with regard to financial inclusion. • We also note that the proposal may result in tax controversies with KRA as the services may still be deemed to be exempt as they may be considered to fall under Paragraph 1(b) which exempts the issue, transfer, receipt or ***any other dealing with money*** (***our emphasis***) including money transfer services, and accepting over the counter payments of household bills, but excluding the services of carriage of cash, restocking of cash machines, sorting or counting of money.

Value Added Tax

#	Proposed change	Details	Our comments
9.	Clarification on refund of tax on bad debts	• The Bill proposes to amend Section 31 of the VAT Act by deleting Subsection 1(d) and (e) which provide that if tax refunded as a result of bad debts is recovered, a taxpayer shall refund the tax to the Commissioner within 60 days from the date of recovery. • This also deletes the proviso that if the tax is not remitted to the Commissioner within the stipulated timelines, an interest of 2% per month shall apply on the amount due. Effective date: 1 July 2024	• The proposal aims to clean up the VAT Act to avoid duplication of VAT provisions. We note that the deleted subsection is duplicated under Section 31(2) and 31(3). • Currently, Section 31 (2) and (3) of the VAT Act also provides that a taxpayer is required to pay back the Commissioner tax refunded as a result of bad debts where the tax has been recovered from the recipient of the supply. However, the period within which a taxpayer should remit the tax refunded is 30 days after the date of recovery. The interest rate remains the same at 2%.
10.	Increase of the VAT registration threshold	• The Bill proposes to amend Section 34 of the VAT Act to increase the VAT registration threshold from KES 5 million to KES 8 million. Effective date: 1 July 2024	• Currently, the VAT Act requires a person who in the course of business has supplied or expects to supply taxable goods or services or both with a value of KES 5 million or more in a period of 12 months to apply for VAT registration within thirty days. • The proposed amendment seeks to increase the VAT registration threshold from KES 5 million to KES 8 million. This is a welcome move as it will relieve small and medium enterprises of the burden of VAT compliance. • However, if the businesses still wish to register for VAT but have not attained the threshold, they will still be allowed to do so voluntarily.

Value Added Tax

#	Proposed change	Details	Our comments
4.	Offset and refund of overpaid withholding VAT	• The Bill proposes to delete Section 17 (5)(c) of the VAT Act which provides that refunds of excess withheld VAT may be applied against any tax payable under the VAT Act or any other written law or is due for refund pursuant to Section 47(4) of the TPA. **Effective date: 1 July 2024**	• The proposed amendment is aimed at aligning with Section 47 of TPA and the proposed changes thereof. • Section 47(4) of the TPA provides that the Commissioner may, for purposes of ascertaining the validity of an application under subsection (1), subject the application to an audit. • Section 47 (1) of the TPA provides that a taxpayer may apply to the Commissioner to offset overpaid tax under any tax law against the taxpayer's outstanding tax debts and future tax liabilities. The Section further states that a taxpayer may apply for a refund of the overpaid tax within 5 years, or 6 months in the case of value added tax, after the date on which the tax was overpaid. • We note that the Bill also proposes to amend Section 47 (1) of the TPA to change the timelines in which a taxpayer can apply for a refund of overpaid tax. • If enacted, a taxpayer will be able to apply for a refund of overpaid income tax within 5 years, or 6 months in the case of **any other tax** after the date on which the tax was overpaid. • Currently, a taxpayer may make an application for a refund of overpaid withholding VAT within 24 months from the date the tax becomes due and payable.

Value Added Tax

#	Proposed change	Details	Our comments
5.	Reduction of timeline in which a taxpayer should lodge a VAT refund	• The Bill proposes to amend Section 17 (5) of the VAT Act by deleting paragraph (d) which provides that a registered taxpayer is required to lodge a VAT refund claim within twenty-four months from the date the tax becomes due and payable. Effective date: 1 July 2024	• Currently, a VAT registered person should lodge a claim for the refund of the excess VAT within twenty-four months from the date the tax becomes due and payable. • The proposed change implies that a taxpayer may apply for a refund of the excess input tax under Section 47 of the TPA, which provides that a taxpayer may apply for a refund for excess VAT within 6 months after the date which the tax was overpaid. • This effectively reduces the time allowed for taxpayers to make a VAT refund arising from excess input tax from 24 months to 6 months. • In addition, the proposal seeks to align the timelines allowed for refunds of taxes to what is provided under Section 47 of the TPA. However, we believe that the 6-month period is too short and that taxpayers should not be denied valid refunds on account of technicalities such as period of application. This deprives taxpayers of their property. The refund period should ideally be aligned to the statute of limitation.
6.	Removal of VAT refunds of excess input VAT incurred in the provision of taxable supplies to official aid funded projects	• The Bill proposes to amend Section 17 (5) of the VAT Act by deleting paragraph (e) which provides that registered manufacturers may apply for a refund of excess input VAT incurred in the provision of taxable supplies to official aid funded projects. Effective date: 1 July 2024	• The Finance Act 2022 amended Section 17 (5) by providing that registered manufacturers may apply for a refund of excess input VAT incurred in the provision of taxable supplies to official aid funded projects. This proposal seeks to reverse the 2022 amendment. • The proposed amendment will increase the project costs and may disincentivise local manufacturers from making supplies to official aid-funded projects thus putting such projects at a competitive disadvantage in obtaining the limited supplies within the economy.

Value Added Tax

#	Proposed change	Details	Our comments
7.	Amendment of the input tax apportionment ratio provisions	• The Bill proposes to abolish the 90-10 input tax apportionment rule. • It seeks to amend Section 17 of the VAT Act by deleting subsection 7 which allows for full deduction of input tax where the value of taxable supplies (standard rated and zero rated) is more than 90% of the total supplies. It also disallows input tax deduction where the value of non-taxable supplies is above 90% of the total supplies. **Effective date: 1 July 2024**	• This proposed change will affect taxpayers who deal with both taxable and non-taxable supplies. Taxpayers will be required to apportion input tax irrespective of whether the taxable or non-taxable supplies are more than 90% of the total supplies. • This will benefit taxpayers who have a bigger proportion of exempt sales as compared to taxable sales as they will be able to claim input tax attributable to taxable supplies. On the other hand, the proposed amendment will disadvantage taxpayers with a bigger portion of taxable sales as compared to exempt sales as they will have to restrict input tax deduction based on the input apportionment formula.
8.	Removal of the deduction of input tax relating to supplies to official aid funded projects	• The Bill proposes to amend Section 17 of the VAT Act by deleting subsection 8 which provides that a registered person who is a manufacturer may make a deduction for input tax with respect to taxable supplies made to an official aid funded project as may be approved by the Cabinet Secretary in accordance with the First Schedule. **Effective date: 1 July 2024**	• Currently, Section 17 (8) of the VAT Act allows VAT registered manufacturers who make taxable supplies to approved official aid funded projects that are exempt from VAT to take a deduction for the input tax incurred in the process of providing the supplies. • This means that suppliers to such projects would be required to absorb the input VAT as part of its cost thus this may be passed on to the official aid funded projects. • An increase in cost to the official aid funded projects may imply that the projects will need to seek additional funding to be able to meet the project goals.

Value Added Tax

#	Proposed change	Details	Our comments
11.	Change of VAT status of bread	• The Bill proposes to delete the words “gluten bread” and “unleavened bread” appearing at the end of the table after the paragraph 39 in Section A of Part I of the First Schedule. • The Bill further proposes to delete Paragraph 13A “the supply of ordinary bread” from the zero-rating schedule. Effective date: 1 July 2024	• The proposed amendments seek to subject bread to VAT at 16%. • To the end consumer, the price of bread which is an essential product, will significantly increase should the proposal pass into law.

Value Added Tax

#	Proposed change	Details	Our comments
13.	VAT on insurance services	• The Bill proposes to delete Paragraph 2 that exempts insurance and reinsurance services excluding the following— (a) management and related insurance consultancy services. (b) actuarial services; and (c) services of insurance assessors and loss adjusters. • The Bill proposes to substitute it with a new paragraph "Insurance and reinsurance premium". **Effective date: 1 July 2024**	• The proposal seeks to limit the scope of exempt insurance services to only underwriting services for which either an insurance or reinsurance premium is earned.
14.	Change of VAT status on gaming and betting	• The Bill proposes the deletion of Paragraph 17 that exempts betting, gaming and lotteries services. **Effective date: 1 July 2024**	• The proposed amendment of Paragraph 17 is to include it under the taxable services. Thus, the service will be subject to VAT at 16% should the proposal pass. • This is an additional effort to increase the cost of betting, gaming and lotteries services so as to regulate the consumption of the services and discourage its negative impacts.
15.	Transfer of business as a going concern	• The Bill proposes to introduce of Paragraph 35 which exempts transfer of a business as a going concern. **Effective date: 1 July 2024**	• The proposal seeks to exempt the transfer of business as a going concern 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.

Value Added Tax

#	Proposed change	Details	Our comments
16.	VAT on aircrafts	• The Bill proposes to delete the following tariff numbers and/or the corresponding descriptions of tariff numbers 8802.30.00 and 8802.60.00 in the table after paragraph 39 in Section A of Part I of the First Schedule which relate to aircrafts of unladed weight between 2,000kgs and 15,000kgs and spacecrafts, respectively. Effective date: 1 July 2024	• The amendment change implies that aircrafts and spacecrafts under these tariff codes will be subject to VAT at 16% thus increasing their cost.
		• The Bill proposes to delete Paragraph 49, which exempts all goods and parts thereof under chapter 88, and replaced it with one that exempts the aircraft parts under Chapter 88. Effective date: 1 July 2023	• Currently, Paragraph 49 exempts all goods including all types of aircraft and their parts of Chapter 88 from VAT. The proposed change implies that only aircrafts parts will be exempt from VAT. • Further, aeroplanes and other aircrafts of tariff code 8802.40.00 have been retained as exempt from VAT.

Value Added Tax

#	Proposed change	Details	Our comments
17.	VAT on inbound freight	• The Bill proposes to delete Paragraph 26 which covers inbound international sea freight offered by a registered person. Effective date: 1 July 2024	• This change was introduced vide the Finance Act 2023 to ensures that where the supplier of international sea freight is a registered person they will accord zero-rate to their service as the same is included as part of the taxable value of imported goods under Section 14 of the VAT Act. • This proposed amendment reverses the efforts to provide clarification at the point inbound freight should be subject to VAT. • In addition, the proposal may result in tax controversies with KRA as they may seek to charge VAT on the inbound freight. This may result in double taxation of the services as the same will be taxed as part of the value of imported goods.

Value Added Tax

#	Proposed change	Details	Our comments
18.	Amendment to Part I of the First Schedule	• Paragraph 54 exempts Goods imported or purchased locally for use by the local film producers and local filming agents, upon recommendation by the Kenya Film Commission, subject to approval by the Cabinet Secretary to the National Treasury. The Bill proposes to delete this Paragraph. Effective date: 1 July 2024	• Goods imported or purchased locally for use by film producers and local filming agents would be taxable at 16% should this proposed change pass into law. • Consequently, this may discourage investment in the local film industry which will affect the current growth in the film industry. • This disruption will contribute to the existing challenges and opportunities facing the Kenya creative economy.
		• Paragraph 57 exempts all goods including material supplies, equipment, machinery and motor vehicles, for official use by the Kenya Defence Forces and the National Police Service. • The Bill proposes to add the words "National Intelligence Service" immediately after the words Kenya Defence Forces to the current Paragraph. Effective date: 1 July 2024	• The proposed measure will exempt all goods including material supplies, equipment, machinery and motor vehicles, for official use by National Intelligence Service. This proposal aims to align the exemptions provided to the National security organs, that is the Kenya Defence Forces, National Intelligence Service and the National Police Service.

Value Added Tax

#	Proposed change	Details	Our comments
19	Amendment to Part I of the First Schedule	• Paragraph 58 exempts Direction-finding compasses, instruments and appliances for aircraft. The Bill proposes to delete this Paragraph. **Effective date: 1 July 2024**	• The proposed amendment will subject the items under the deleted Paragraph to VAT at 16%.
		• Paragraph 62 exempts 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. The Bill proposes to delete this Paragraph. **Effective date: 1 July 2024**	• This proposed measure 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 exempts taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption. The Bill proposes to delete this Paragraph. **Effective date: 1 July 2024**	• The proposed measure deletes this Paragraph which was reinstated vide the Finance Act 2023. The exemption of construction material for specialized hospitals was intended to align with addressing the cost of and access to healthcare in the country. • This proposal will lead to the increased cost of access to healthcare to citizens as the supply will be subject to VAT at 16%.

Value Added Tax

#	Proposed change	Details	Our comments
20	Amendment to Part I of the First Schedule	• The Bill proposes to delete the following Paragraphs: i. Paragraph 77 Pressure sensitive adhesive of tariff number 3506.91.00. ii. Paragraph 78 Plain polythene film/LPDE of tariff number 3921.19.10. iii. Paragraph 79 Plain polythene film/PE of tariff number 3921.19.10. iv. Paragraph 80 PE white 25-40gsm/release paper of tariff number 4811.49.00 v. Paragraph 81 ADL 25-40gsm of tariff number 5603.11.00 Effective date: 1 July 2024	• The proposed measure will subject items under the deleted paragraphs to VAT at 16%.
		• The Bill proposes to delete Paragraph 91 which exempts specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion. Effective date: 1 July 2024	• The removal of the exemption will lead to an increase in costs of the vehicles used on tours as they will be subject to VAT at 16%. The proposed measure is expectedly going to have an impact on the tourism sector and negates the efforts by the Government in the recent past to promote tourism in Kenya.

Value Added Tax

#	Proposed change	Details	Our comments
21	Amendment to Part I of the First Schedule	• Paragraph 107 exempts plant, machinery and equipment used in the construction of a plastics recycling plant. The Bill proposes to delete this Paragraph. Effective date: 1 July 2024	• 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 110 exempts musical instruments and other musical equipment, imported or purchased locally, for exclusive use by educational institutions, upon recommendation by the Cabinet Secretary responsible for Education. The Bill proposes to delete this Paragraph. Effective date: 1 July 2024	• The proposed measure will result in musical instruments and other musical equipment imported or purchases locally for exclusive use by educational institutions to VAT at 16% should the proposal pass into law.
		• Paragraph 113 exempts specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters and deep cycle batteries that use or store solar power, upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy. • The Bill proposes to add the words "until the completion of the projects under development" at the end of Paragraph 113. Effective date: 1 July 2024	• The proposed change limits the exemption from VAT of equipment used in such projects to the completion of the development of the project. This proposal clarifies that once the project is complete, the supplies relating to the specialised equipment will be subject to VAT at 16%. • In addition, the exemption in this Paragraph is for Specialized equipment for the development and ***generation*** (***our emphasis***) of solar and wind energy, including photovoltaic modules. It remains unclear whether specialized equipment for generation of solar/wind energy will attract VAT at 16%. This proposal should be rescinded to promote green energy.

Value Added Tax

#	Proposed change	Details	Our comments
22	Amendment to Part I of the First Schedule	• Paragraph 114 exempts taxable goods supplied to persons that had an agreement or contract with the Government prior to 25th April 2020 and the agreement or contract provided for exemption from value added tax, provided that this exemption shall apply to the unexpired period of the contract or agreement and upon recommendation by the Cabinet Secretary responsible for matters relating to energy. The Bill proposes to delete this Paragraph. **Effective date: 1 July 2024**	• The proposed measure will result in the mentioned taxable goods being subject to VAT at 16%.
		• Paragraph 144 exempts locally manufactured passenger motor vehicles. The Paragraph defines a "locally manufactured passenger motor vehicle" to means a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose ex-factory value comprises at least thirty percent of local content; and "local content" means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya. • The Bill proposes to further define "original equipment manufacturer" to mean a manufacturer of the parts and subassemblies who owns the intellectual property rights in the parts or subassemblies". **Effective date: 1 July 2024**	• The proposed addition aims at providing clarity on what an original equipment manufacturer means as this is a determinant of what qualifies as local content for locally manufactured passenger motor vehicle.

Value Added Tax

#	Proposed change	Details	Our comments
23	Amendments relating to special operating framework agreements	• Paragraph 145 of Part I of the First Schedule exempts taxable goods, inputs and raw materials imported or locally purchased by a company which is: a) engaged in business under a special operating framework arrangement with the Government; and b) incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least ten billion shillings, subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health. • Paragraph 34 of Part II of the First Schedule exempts services provided to such companies. • The Bill proposes to include a proviso under Paragraph 145 and Paragraph 34 as follows: *Provided that this paragraph shall not apply to a special operating framework arrangement entered into by the Government on or after the 1st of July, 2017.* Effective date: 1 July 2024	• The proposed proviso limits the exemptions provided under these paragraphs to companies that signed a special operating framework arrangement prior to July 2017. • This means that companies that signed agreements with the government starting 2nd July 2017 will not enjoy the exemption from VAT. • This may result in less motivation by companies to enter into such arrangements as there is no cost benefit from a VAT perspective. This may put the Government at a disadvantage as some of this companies help support various economic goals within the country.

Value Added Tax

#	Proposed change	Details	Our comments
24	Amendment to Part I of the First Schedule	• 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 2024	• The proposed deletion removes the discretionary powers of the Cabinet Secretary to grant exemption on investments in the manufacturing sector. • This proposal, however, removes the incentive for investors to make capital investments into Kenya as there will be an additional cost resulting to VAT charged at 16% on the capital supplies.
		• The Bill proposes to introduce Paragraph 148 which exempts inputs and raw materials used in the manufacture of mosquito repellent on recommendation by the Cabinet Secretary responsible for matters relating to health. • The Bill also introduces Paragraph 149 which exempts mosquito repellents from VAT. Effective date: 1 July 2024	• This proposed amendment is a welcome change as it encourages investors or manufacturers of mosquito repellents to invest in the sector. • It will also place local manufacturers at a competitive advantage when competing against foreign imports. • This is inline with Government efforts to reduce the prevalence of Malaria in Kenya.

Value Added Tax

#	Proposed change	Details	Our comments
25	Amendment to Part I of the First Schedule	• The Bill proposes the introduction of Paragraph 150 which exempts tea packaging material. **Effective date: 1 July 2024**	• The proposed measure is informed by the Government's push for the tea industry to process tea in Kenya so as to add value prior to its export out of Kenya. This way the exporters will earn more revenues from the sale of the tea thus growing the industry at large.
		• The Bill proposes the introduction of Paragraph 151 which exempts micronutrients, foliar feeds and bio-stimulants of Chapter 38. **Effective date: 1 July 2024**	• The proposed measure will reduce the cost of inputs used by farmers reducing the cost of production of food in Kenya.
		• The Bill proposes the introduction of Paragraph 152 which exempts the supply of motorcycles with an electric motor for propulsion of tariff heading 8711.60.00. • The Bill further proposes to delete this item from the zero-rating schedule by deleting Paragraph 30 of Part A of the Second Schedule of the VAT Act. **Effective date: 1 July 2024**	• The proposed measure deletes this Paragraph from the zero-rated schedule which was introduced vide the Finance Act 2023. • The introduction of the Paragraph under the exempt schedule implies that the supplier of such motorcycles will not enjoy the deduction of input tax incurred on operations. This would expectedly result in higher business costs and, perhaps, a proportionate increment in the prices of electric motorcycles. • From a Government viewpoint, exemption reduces cases of refunds occasioned by zero-rating.

Value Added Tax

#	Proposed change	Details	Our comments
26	Amendment to Part I of the First Schedule	• The Bill proposes-the introduction of Paragraph 153 which exempts bioethanol vapour (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel). • The Bill also proposes deletion of the items from the zero-rating schedule by deleting Paragraph 35 of Part A of the Second Schedule of the VAT Act. Effective date: 1 July 2024	• The proposed 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 bioethanol vapour (BEV) Stoves. • This BEV stoves are mainly used by low-income households as an alternative to kerosene. This increase in cost will negatively impact such households as it reduces their disposable income.
		• The Bill proposes the introduction of Paragraph 154 which exempts all inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture. • The Bill also proposes the introduction of Paragraph 155 which exempts agricultural pest controls products. • The Bill also proposes deletion of both items from the zero-rating schedule by deleting Paragraph 16 and Paragraph 19 of Part A of the Second Schedule of the VAT Act, respectively. Effective date: 1 July 2024	• The proposed 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.

Value Added Tax

#	Proposed change	Details	Our comments
27	Amendment to Part I of the First Schedule	• The Bill proposes to delete Section B of Part I of the First Schedule. Effective date: 1 July 2024	• This proposal is a clean-up of the First Schedule as the petroleum products under Section B are subject to VAT at 16% following the amendments made through the Finance Act, 2023.

Value Added Tax

#	Proposed change	Details	Our comments
28	Amendment to Part II of the First Schedule	• Paragraph 18 exempts hiring, leasing and chartering of aircrafts, excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00. The Bill proposes to delete this Paragraph. Effective date: 1 July 2024	• The proposed deletion would render the hiring, leasing and chartering of aircrafts standard rated for VAT purposes.
		• Paragraph 21 exempts services imported or procured locally for use by the local film producers or local film agents upon recommendation by the Kenya Film Commission, subject to approval by the Cabinet Secretary for the National Treasury. • The Bill proposes to delete this Paragraph. Effective date: 1 July 2024	• Services imported or procured locally for use by film producers and local filming agents would be taxable at 16% should this proposed change pass into law. • Consequently, this may discourage investment in the local film industry which will affect the current growth in the film industry.

Value Added Tax

#	Proposed change	Details	Our comments
29	Amendment to Part II of the First Schedule	• Paragraph 26 exempts taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon the recommendation by the Cabinet Secretary responsible for matters relating to recreational parks. • The Bill proposes to delete this Paragraph. Effective date: 1 July 2024	• This proposed measure affects the tourism sector in the country and negates the efforts by the Government in the recent past to promote tourism in Kenya.
		• Paragraph 27 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. • The Bill proposes to delete this Paragraph. Effective date: 1 July 2024	• The proposed measure deletes this Paragraph which was reinstated vide the Finance Act 2023. The exemption of taxable services for specialized hospitals was intended to align with addressing the cost of healthcare in the country.

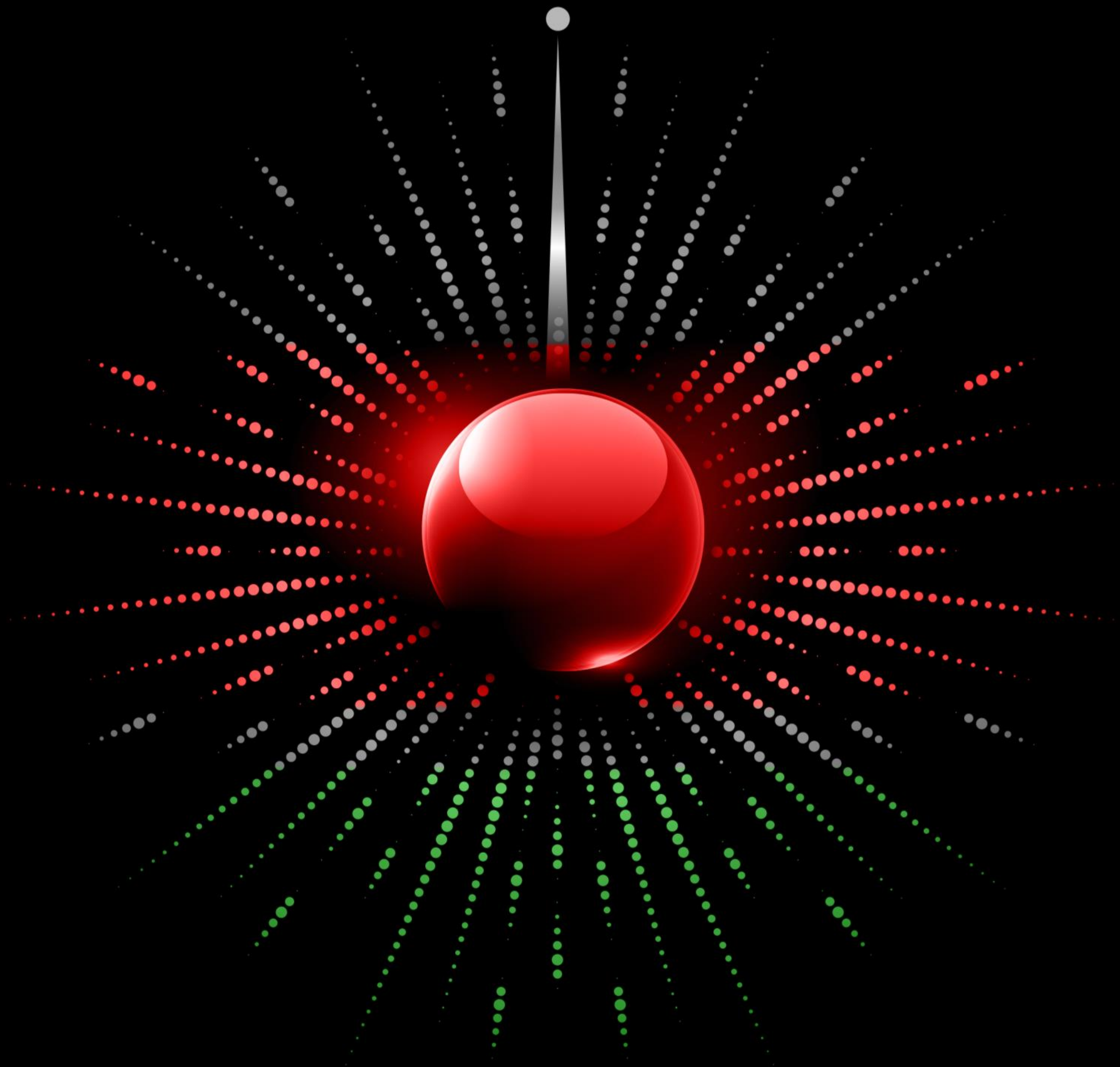
Value Added Tax

#	Proposed change	Details	Our comments
30	Amendment to Part A of the Second Schedule	• The Bill proposes to delete Paragraph 21 which zero-rates the transportation of sugarcane from farms to milling factories. **Effective date: 1 July 2024**	• The proposed amendment will revert the VAT status the said transport services to 16%. This will result in an increase in the input costs incurred by sugar/farmers manufacturers in Kenya thus an increase in the cost of sugar.
		• The Bill proposes to delete Paragraph 29 which zero-rates covering the supply of locally assembled and manufactured mobile phones. **Effective date: 1 July 2024**	• This change was introduced vide the Finance Act 2023 to encourage the investors or manufacturers to invest in this sector and also increase purchase of locally assembled and manufactured mobile phones further promoting growth in the economy. However, this deletion from the Second schedule will result in locally assembled mobile phones being subject to VAT at 16%. • The proposed measure will place local manufacturers at a disadvantage when competing against foreign imports.

Value Added Tax

#	Proposed change	Details	Our comments
	Amendment to Part A of the Second Schedule	• The Bill proposes to delete Paragraph 31 which zero-rates the supply of electric bicycles. **Effective date: 1 July 2024**	• The proposed change will result in the supply of electric bicycles, solar of solar and lithium-ion batteries, and electric buses being subject to VAT at 16%. • This will discourage the investors or manufacturers to invest in this sector. It is also a backward move against the efforts made towards reducing carbon emission. It is a negation from the global trend towards environmental conservation.
		• The Bill proposes the deletion of Paragraph 32 which zero-rates the supply of solar and lithium-ion batteries. **Effective date: 1 July 2024**	
		• The Bill proposes to delete Paragraph 33 which zero-rates the supply of electric buses of tariff heading 87.02. **Effective date: 1 July 2024**	

Excise Duty



Excise Duty

#	Proposed change	Details	Our comments
1.	Clarification on tariff classification of excisable goods	• The Bill proposes to amend Section 2 of the Excise Duty Act, 2015 (EDA) to clarify that excisable goods in the EDA will be classified in accordance with the East African Community Common External Tariff (EACCET). Effective date: 1 July 2024	• The EDA refers to goods based on their tariff codes to ensure clarity and uniformity in interpretation of the law. Whereas the EDA does not expressly refer to the EACCET, it is inferred that the tariff codes are those set out in the EACCET. • Goods imported into Kenya are classified in accordance with the EACCET as provided for under Annex 1 to the East African Community Customs Union Protocol. Further, classification of goods in the EACCET is governed by the General Rules of Interpretation (GIR) as set out in the appropriate order. • The proposal is geared towards aligning the provisions of the EDA with the current practice on classification of excisable goods.
2.	Introduction of excise duty on excisable services offered by a non-resident through a digital platform	• The Bill proposes to amend Section 5 of the EDA by introducing excise duty on excisable services offered by a non-resident through a digital platform. The excise duty shall be payable by the non-resident offering the service. Effective date: 1 July 2024	• The EDA currently provides for excise duty on excisable services provided from a place of business of the supplier in Kenya. The Bill proposes to expand the scope of excisable services to include those provided by non-resident persons through a digital platform. • The proposal if adopted will mean that providers of excisable services (e.g. money transfer services, betting and gaming, internet data services) based outside Kenya will be required to account for excise duty on these services. • This proposal is may be aimed at providing a level playing field for resident and non-resident providers of excisable services from an excise duty perspective and to generate additional revenue for the Government. However, it will result into higher costs for consumers.

Excise Duty

#	Proposed change	Details	Our comments
3.	Introduction of excise duty remission on spirit	• The Bill proposes to amend Section 7(2) of the EDA by introducing remission of excise duty on spirit made from sorghum, millet or cassava or any other agricultural products, (excluding barley), grown in Kenya. Effective date: 1 July 2024	• Section 7(2) of the EDA currently provides for excise duty remission on beer or wine made from sorghum, millet or cassava or any other agricultural products, (excluding barley), grown in Kenya. • The remission is granted by the CS at 80% upon application by manufacturers of beer in accordance with the Excise Duty (Remission of Excise Duty) Regulations, 2017. • The bill proposes to extend the duty remission to spirits manufactured using locally grown agricultural produce(excluding barley). In order for the remission to take effect the CS will be required to include spirits in the duty remission regulations. • This is a welcome proposal that will improve the affordability of locally brewed spirits and discourage consumption of illicit alcohol. • In addition, this measure aims to increase demand for locally grown agricultural produce such as grapes and sugar-cane used in the manufacture of spirits.

Excise Duty

#	Proposed change	Details	Our comments
4.	Timeline for issuing excise duty license	• The Bill proposes to amend Section 17(1) of the EDA to provide for a 14-day timeline after receipt of all the required valid documents within which the Commissioner should consider and respond to an application for excise duty. The Commissioner may grant or refuse to grant a license to the applicant. • Currently, the EDA does not provide for any timelines within which the Commissioner should respond to an application for excise duty license. Effective date: 1 July 2024	• The proposal is aimed at providing certainty in processing of excise duty licenses and is expected to enhance efficiency in the processing and issuance of licenses.
5.	Payment of excise duty on alcoholic beverages within five working days upon removal of the goods from the stockroom.	• The Bill proposes to amend Section 36(1A) of the EDA by increasing the period within which excise duty on alcoholic beverages should be remitted to the Commissioner from 24hrs to five working days upon removal of the goods from the stockroom. Effective date: 1 July 2024	• Last year, the Government amended the timelines within which excise duty on alcoholic beverages should be remitted to the Commissioner from once per month to every 24 hrs. • The proposed amendment is a welcome move that will ease the administrative burden and improve the cash flow position for licensed manufacturers of alcoholic beverages, albeit marginally.

Excise Duty

#	Proposed change	Details	Our comments
6.	Repeal of relief of excise duty on raw materials	• The Bill proposes to repeal Section 14 of the EDA that provides for relief of excise duty on raw materials used to manufacture excisable goods and purchase of bulk data by licenced internet data providers for resale. • Section 14 of the EDA provides that: a) Excise duty paid on excisable goods used as raw materials in the manufacture of other excisable goods shall be offset against the excise duty payable on the finished goods. b) Excise duty paid on internet data services by a licensed person who purchases the data in bulk for resale, shall be offset against the excise duty payable on internet data services supplied to the final consumer. Effective date: 1 July 2024	• Relief of excise duty under Section 14 of the EDA is aimed at cushioning manufacturers from double taxation of excise duty on excisable raw materials used in the manufacture of excisable goods. • The proposal to delete Section 14 will therefore result in double taxation of excisable raw materials and bulk internet purchased for resale. This proposal, if adopted will unfairly increase the cost of manufacturing the affected products such spirits and juices.

Excise Duty

#	Proposed change	Details	Our comments
7.	Amendment of excise duty on motorcycles	• The Bill proposes to amend Part I of the First Schedule to the EDA to remove excise duty on petrol engine motorcycles and introduce excise duty on imported electric motorcycles other than motorcycle ambulances. • Further, the Bill proposes to amend excise duty on the motorcycles from a specific rate of KES 12,952.83 per unit to a hybrid rate of 10% of the value or KES12,952.83 per unit whichever is higher. Effective date: 1 July 2024	• Imported electric motorcycles are currently not subject to excise duty to encourage use of electric motorcycles and protect the environment from carbon emissions associated with the use of petrol-powered motorcycles. • The Government`s proposal to introduce excise duty on imported electric motorcycles is aimed at discouraging the importation of electric motorcycles in order to promote local assembly of electric motorcycles. • The Government recently launched the national e-mobility programme with the aim of accelerating e-mobility adoption, empowering youth and lowering the operational cost in the *boda boda* industry. • However, the proposal to remove excise duty on petrol powered motorcycles may increase demand for these motorcycles and derail the Government`s policy of encouraging local assembly of electric motorcycles.

Excise Duty

#	Proposed change	Details	Our comments
8.	Removal of excise duty on excisable goods originating from the East African Community (EAC)	• The Bill proposes to-remove excise duty on the following excisable goods originating from the EAC in accordance with the EAC Rules of Origin: a) Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90 b) Imported eggs of tariff heading 04.07 c) Imported onions of tariff heading 07.03 d) Imported potatoes, potato crisps and potato chips of tariff heading 07.01 and imported potatoes of tariff numbers 0710.10.00, 2004.10.00 and 2005.20.00 **Effective date: 1 July 2024**	• Article 15 of the EAC Customs Union Protocol prohibits imposition of any internal taxation on products of other Partner States in excess of that imposed, directly or indirectly, on similar domestic products. • The current imposition of excise duty on products imported from the EAC discriminates against these products in contravention of Article 15 of the EAC Customs Union protocol. • The contravention of Article 15 by Kenya is in fact one of the outstanding non-tariff barriers at the EAC. • The proposal to remove excise duty on goods originating from the EAC will ensure Kenya complies with Article 15 and promote trade within the EAC.
9.	Clarification that imported clinker is not subject to excise duty	• The Bill proposes to amend the First Schedule of the EDA to expressly exclude clinker from excise duty. **Effective date: 1 July 2024**	• The EDA as amended by the Finance Act 2023 provides for excise duty on imported cement at 10% of the value or KES 1.50 per Kg whichever is higher to protect local manufacturers of cement from cheap imports. • In our view, cement clinker is not subject to excise duty based on the current provisions. This proposal appears to be geared towards providing clarity that cement clinker is not subject to excise duty.

Excise Duty

#	Proposed change	Details	Our comments
10.	Re-introduction of excise duty on locally manufactured articles of plastic of Tariff Codes 3923.30.00 and 3923.90.90	• The Bill proposes to introduce excise duty on locally manufactured articles of plastic of Tariff Codes 3923.30.00 and 3923.90.90 at 10%. • Currently only imported articles of plastics are subject to excise duty. **Effective date: 1 July 2024**	• The Government introduced excise duty on imported articles of plastic to protect local manufacturers of these articles from cheap imports. • In our view, the re-introduction of excise duty on locally manufactured articles of plastic is perhaps aimed at discouraging the use of plastics in a bid to protect the environment from the negative effects of plastic pollution.
11.	Amendment of excise duty on styrene acrylic	• The Bill proposes to amend the First Schedule of the EDA by replacing the words "*imported Emulsion styrene Acrylic*" with "*styren- acrylonitrile (SAN) copolymers*". **Effective date: 1 July 2024**	• The amendment in the description of styrene acrylic subject to excise duty is perhaps aimed at providing clarity by aligning the description with the EACCET description under Tariff Code 3903.20.00 .

Excise Duty

#	Proposed change	Details	Our comments
12.	Changes in excise duty rates on various goods	• The Bill proposes to amend the excise duty rates on the following products: a) Imported sugar confectionary of tariff heading 1704 from Shs 42.91 per kg to Shs 257.55 per kg. b) Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits from KES 243.43 per litre to Shs 22.50 per centilitre of pure alcohol. c) Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6% from KES 142.44 per litre to KES22.50 per centilitre of pure alcohol. d) Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6% from KES356.42 per litre to Shs 16 per centilitre of pure alcohol. e) Cigarette with filters (hinge lid and soft cap) from Shs 4,067.03 per Mille to Shs 4,100 per Mille. f) Cigarette without filters (plain cigarettes) from KES 2,926.41 per Mille to Shs 4,100 per Mille. Effective date: 1 September 2024 for alcoholic beverages 1 July 2024 for cigarettes & confectionary	• The Bill proposes to amend excise duty rates on various products mostly considered as "*harmful products*" in accordance with the Medium-Term Revenue Strategy (MRTS) as follows: Alcoholic beverages • The Bill seeks to impose excise duty based on the alcoholic content as opposed to total volume of the product to discourage consumption of alcoholic beverages based on the level of health risks posed. Cigarettes • The Bill proposes to harmonise excise duty on filtered and non-filtered cigarettes at KES 4,100 per mille. Currently filtered cigarettes attract a higher excise duty rate of KES 4,067.03. According to the MRTS, harmonisation of excise duty on cigarettes is in line with international best practice and is aimed at ensuring fairness. Confectionery • Currently chocolates attract excise duty at a higher rate of KES 257.55 per Kg while confectionery of Tariff Heading 1704 attract excise duty at KES 42.91. The Bill proposes to harmonise excise duty on chocolate and confectionery at KES 257.55 perhaps in a bid to ensure fairness particularly considering both products are subject to excise duty because they contain sugar which is considered harmful.

Excise Duty

#	Proposed change	Details	Our comments
13.	Increase of excise duty rates on other tobacco products	The Bill proposes to increase excise duty on the following tobacco products: • Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences from KES1,595 per Kg to Shs 2,000 per Kg. • Liquid nicotine for electronic cigarettes from KES 70 per millilitre to KES 100 per millilitre. Effective date: 1 September 2024	• Consumption of liquid nicotine has been very popular in Kenya particularly amongst the youth. Liquid nicotine products are widely associated with negative health effects. This measure may be geared towards discouraging consumption of these products to protect the population from the associated health effects. It also aims to increase the revenue collected on the affected products.
14.	Introduction of excise duty on coal and vegetable oil	• The Bill proposes to introduce excise duty on the following products: a) Coal at the rate of 5% of the value or Shs 27,000 per metric ton whichever is higher. b) Vegetable oils of Tariff Headings 1511, 1512, 1515 and 1517 at the rate of 25%. Effective date: 1 July 2024	• We note that coal is used as a cheap source of energy by heavy industries such as cement and steel manufacturers to fire their plants. However, the mining and use of coal results in environmental degradation. The proposal is therefore geared towards discouraging the use of coal. • Further we note that the country had attempted to generate coal power on a grid level but was faced with several challenges, including environmental concerns and withdrawal of key funders.

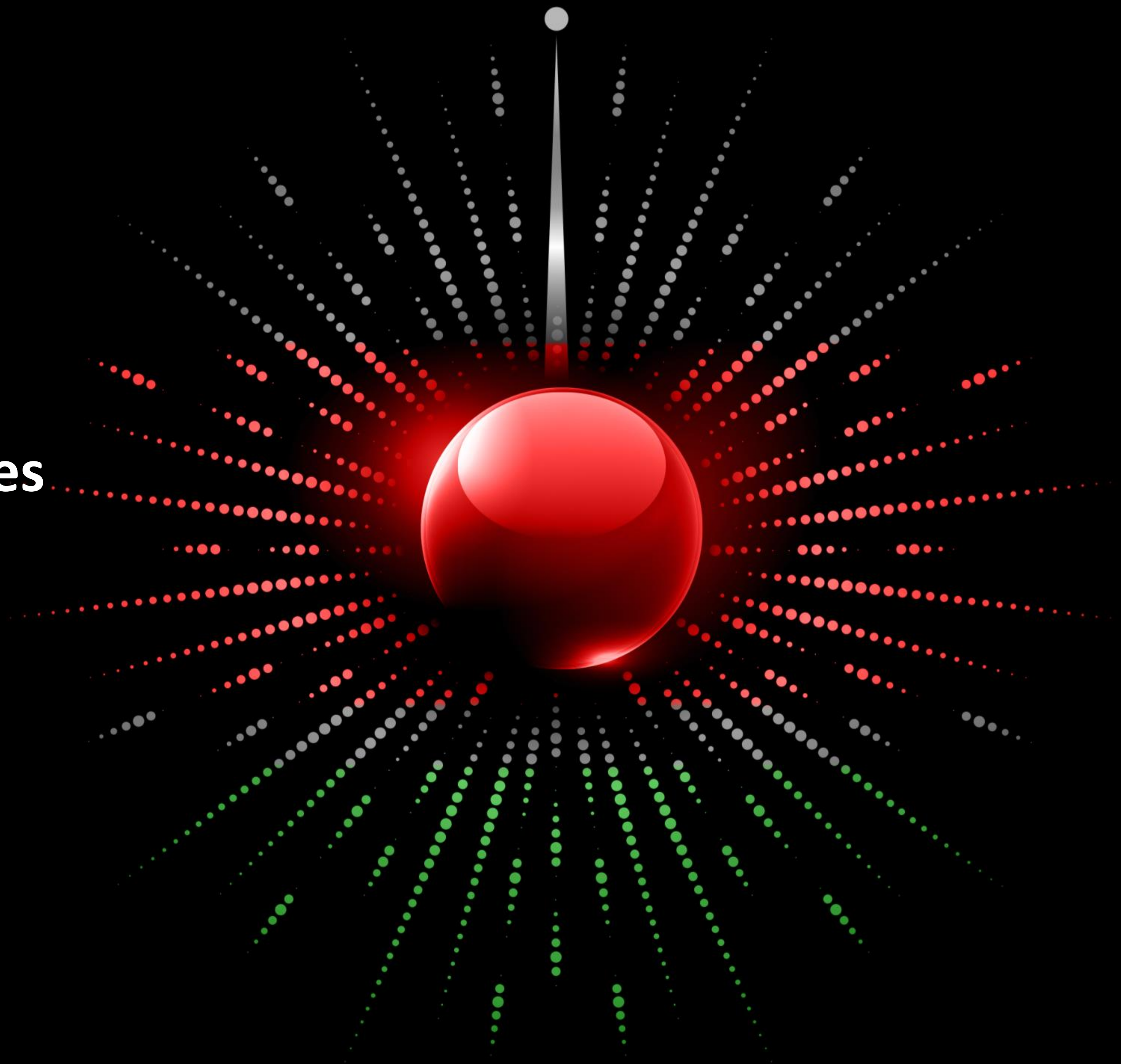
Excise Duty

#	Proposed change	Details	Our comments
15.	Introduction of excise duty on fees charged on advertisements via internet and social media in relation to alcoholic beverages, betting, gaming, lotteries and prize competitions	• The Bill proposes to introduce excise duty on fees charged on advertisements via the internet and social media on alcoholic beverages, betting, gaming, lotteries and prize competitions at 15%. • Currently, excise duty is only applicable on fees charged on advertisement via the television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions at the rate of fifteen per cent. **Effective date: 1 July 2024**	• The proportion of advertisements done via the internet and social medial has soared within the last decade. • This proposal is aimed at broadening excise duty applicable on advertisement to include advertisement via internet and social media to ensure fairness and uniformity in taxation of advertisement of alcohol, betting, gaming, lotteries and prize competitions.
16.	Increase of excise duty rates on various services	• The Bill proposes to increase excise duty on various services as follows: a) Telephone and internet data from 15% to 20% b) Fees charged for money transfer by banks, money transfer agencies and other financial service providers from 15% to 20% c) Fees charged for money transfer by cellular phone service providers, or payment service providers licensed under the National Payment System Act, 2011 from 15% to 20% d) Betting (excluding horse racing), gaming, price competition and lottery (excluding charitable lotteries) from 12.5% to 20% **Effective date: 1 July 2024**	• The increase of excise duty on fees charged by banks and other financials service providers to 20% is perhaps aimed at harmonising the excise duty rate with that applicable on other fees charged by these institutions. We note that last year, the Government had reduced the rate of excise duty on the money transfer services from 20% to 15% to harmonise the rate with that applied to money transfer services provided by telecoms. The regular changes in excise duty rates on these services creates uncertainty for these sectors. The increased rate means higher costs for consumers and is a negative move considering the importance of payments and other affected services in facilitating trade and investment. • The proposal to increase excise duty on betting, gaming, prize competition and lottery to 20% is aimed at further curtailing the consumption of services that are considered harmful while increasing revenues to the government. In our view, 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. • We note that the Finance Act 2023 increased the excise duty rate to 7.5% from 12.5%.

Excise Duty

#	Proposed change	Details	Our comments
17.	Amendment of the exemption schedule	• The Bill proposes to amend Part A, Paragraph 11 of the Second schedule to the EDA to exempt all goods including materials supplies, equipment, machinery and motor vehicles for the official use by the National Intelligence Service. • Currently the EDA only exempts these goods for the official use by the Kenya Defence Forces and the National Police Service from excise duty. Effective date: 1 July 2024	• The exemption is aimed at ensuring that the agency is able to allocate resources more efficiently towards their core functions. Taxation of supplies to these Government agencies diverts funds away from essential services hindering their ability to serve the public effectively.
18.	Deletion of provisions on inflationary adjustment of excise duty rates.	• The Bill proposes to delete Part I, Paragraph 2 of the First Schedule to EDA which provides guidance on inflationary adjustment of excise duty rates. Paragraph 2 outlines the formulae used in adjusting excise duty rates for inflation. Effective date: 1 July 2024	• The Finance Act 2023 repealed Section 10 of the EDA which provided for annual inflationary adjustment of specific excise duty rates. However, Part I Paragraph 2 of the First Schedule to the EDA which guides on adjustment of the excise duty rates was not deleted. • This proposal is aimed at deleting Paragraph 2 which appears to have been inadvertently retained.

Miscellaneous Fees and Levies



Miscellaneous Fees and Levies

#	Proposed change	Details	Our comments
1.	Increase of Import Declaration Fee (IDF) rate.	• The Bill proposes to amend Section 7 of the Miscellaneous Fees and Levies Act (MFLA) by increasing IDF imposed on goods imported into Kenya for home use from 2.5% to 3%. • The Bill also proposes to amend Section 7(7) of the MFLA by allocating 20% of IDF collected for revenue enforcement initiatives or programmes. Effective date: 1 July 2024	• In 2022, the Government reduced IDF rate from 3.5% to 2.5% and deleted the reduced rate of 1.5% applicable on raw materials and intermediate goods. • The increase in IDF on imported goods will increase the cost of imported goods and it is likely that the additional IDF cost will be passed on to customers. The Government should perhaps consider reintroducing a lower IDF rate on raw materials and intermediate goods to cushion local manufacturers from increased input costs. • The proposal to allocate 20% of IDF collected for revenue enforcement initiatives will be welcome by the revenue authority as it will enhance its financial position.

Miscellaneous Fees and Levies

#	Proposed change	Details	Our comments
2.	Exemption of Import Declaration Fee (IDF) and Railway Development Levy (RDL)	• The Bill proposes to amend the Second Schedule to the MFLA by exempting the following from IDF and RDL: a) All goods including material supplies, equipment, machinery and motor vehicles for the official use by the National Intelligence Service (NIS). b) Inputs, raw materials and machinery used in the manufacture of mosquito repellent on recommendation by the Cabinet Secretary responsible for matters relating to health. Effective date: 1 July 2024	• The MFLA currently provides for IDF and RDL exemption on goods imported by the Kenya defence Forces (KDF) and National Police Service (NPS). Goods procured by KDF and NPS are also exempted from VAT and excise duty. • This proposal is therefore aimed at extending the IDF and RDL exemption currently being enjoyed by KDF and NPS to NIS. The proposed exemption will reduce the operation costs of NIS and ultimately aim to improve delivery of services. • Malaria morbidity and mortality carries significant societal costs and burdens on the public healthcare system. Treatment, control, and prevention pose a substantial economic burden on the government and individual households, impeding economic growth by reducing the size of the labour force. Moreover, malaria treatments significantly increase health care spending at private and public levels. • The proposal to exempt inputs for manufacture of mosquito repellents will increase their affordability particularly for Kenyans in the endemic regions.

Miscellaneous Fees and Levies

#	Proposed change	Details	Our comments
3.	Revision of the Third Schedule to the MFLA	• The Bill proposes to revise the Third Schedule of the MFLA that provides for goods subject to export and investment promotion levy (EIPL). The revised schedule proposes to introduce EIPL on alcoholic beverages, shoes, furniture, motorcycles, mattress supports, milk and cream, cooking stoves for liquid fuel and other products as listed in the table below. • The Bill also proposes to reduce EIPL on clinker from 17.5% to 10% and kraft liner from 10% to 3%. Effective date: 1 July 2024	• EIPL was introduced through the Finance Act 2023 with a view to discourage importation of locally manufactured goods and protect local manufacturers from competition arising from cheap imports. • The Bill proposes to expand the list of items subject to EIPL. • The Government should carefully assess products proposed to attract EIPL to ensure there is capacity to meet local demand. Otherwise, the introduction of EIPL will increase the cost of procuring these products and negatively impact the welfare of the local Mwananchi.

Miscellaneous Fees and Levies

Third Schedule – Goods subject to EIPL

Tariff No.	Tariff description	Proposed EIPL rate on customs value
Chapter 42	Articles of leather	20%
Chapter 64	Imported footwear	20%
2207.20.00	Denatured ethyl alcohol and other spirits	3%
2208.40.00	Rum and other spirits obtained by distilling fermented sugar	3%
2208.60.00	Vodka	3%
2523.10.00	Cement Clinkers	10%
3401.30.00	Organic surface-active products and preparations for washing the skin	3%
4804.11.00	Kraft liner	3%
4804.29.00	Uncoated kraft paper and paperboard, in rolls or sheets, other than that of heading 48.02 or 48.03	3%
0401.20.00	Milk and cream of a fat content by weight exceeding 1% but not exceeding 6%	3%
69.10	Ceramic sinks, wash basins, pedestals, baths, bidet, water closet pans, flushing cistern, urinals and similar sanitary fixtures	3%
7207.11.00	Billets	10%
7321.12.00	Cooking stoves for liquid fuel	3%
9404.10.00	Mattress supports	3%
8711.10.90	Motorcycles with internal combustion engine not exceeding 50cc	3%
8711.20.10	Motorcycles with internal combustion engine exceeding 50cc but not exceeding 250cc – Motorcycle ambulances	3%

Miscellaneous Fees and Levies

Third Schedule – Goods subject to EIPL

Tariff No.	Tariff description	Proposed EIPL rate on customs value
8711.20.90	Motorcycles with internal combustion engine exceeding 50cc but not exceeding 250cc - Other	3%
8711.30.90	Motorcycles with internal combustion engine exceeding 250cc but not exceeding 500cc - Other	3%
8711.30.90	Motorcycles with internal combustion engine exceeding 250cc but not exceeding 500cc - Other	3%
8711.40.90	Motorcycles with internal combustion engine exceeding 500cc but not exceeding 800cc - Other	3%
8711.50.90	Motorcycles with internal combustion engine exceeding 800cc - Other	3%
8711.60.00	Electric motorcycles	3%
8711.60.00	Electric motorcycles	3%
9403.10.00 9403.20.00 9403.30.00 9403.40.00 9403.50.00 9403.60.00 9403.70.00 9403.82.00 9403.83.00 9403.89.00	Varied metal ,wooden, plastic, bamboo ,rattan, cane, osier or similar material furniture	3%
9403.91.00 9403.99.00	Parts of furniture	3%
9404.10.00	Mattress supports	3%

Miscellaneous Fees and Levies

#	Proposed change	Details	Our comments
4.	Introduction of eco levy on specified products manufactured in Kenya or imported into Kenya	• The Bill proposes to introduce eco levy on imported and locally manufactured goods as specified in the proposed Fourth Schedule of the MFLA. • The proposed goods include office machines, smart phones automatic data processing machines, transmission apparatus for radio broadcasting or television, telephone sets, rubber tyres, diapers, among others. The detailed list under the proposed Fourth Schedule is enclosed in the table below. • The levy shall be payable by the manufacturer at the time of removal of the goods from the excise stock room in case of locally manufactured goods. • In case of imported goods, the levy shall be paid by the importer at the time of entering the goods into the country. • The purpose of the levy will be to ensure importers and manufacturers of the proposed goods pay for the negative environmental impact of the goods. • The Cabinet Secretary may make Regulations for the better implementation of eco levy collection. Effective date: 1 July 2024	• According to the Bill, eco levy is geared towards compensating the Government for negative externalities associated with consumption of the affected goods. • We note that the Government already imposes excise duty on goods which are considered harmful to the environment to compensate the Government for costs incurred in addressing the harm caused. Some of the goods proposed to attract eco levy are already subject to excise duty e.g. smartphones and plastic packing materials. • The Government should consider taxing harmful goods through excise duty in line with international best practice. However, should the Government opt to introduce eco levy, then products already subject to excise duty should be excluded. Government should also consider a more holistic approach to incentivise proper disposal or management of waste including investment in critical waste management infrastructure. • The Government should also take into consideration the impact that the levy may have on affordability on some of the critical goods such as computers, diapers, smart phones etc. • Young people are venturing into digital space and with the eco levy being imposed on most of the digital space apparatus, we may see a decline in the digital space partakers and reduction of digital content.

Miscellaneous Fees and Levies

Fourth Schedule – Goods subject to Eco Levy

Tariff No.	Tariff description	Proposed Eco Levy rate (KES)
Heading 8471 excluding storage units of 8471.70.00	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included.	225 per unit
8472.90.00	Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines)–other.	225 per unit or 98 per unit
8470.21.00	Calculating machines and pocketsize data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket issuing machines and similar machines, incorporating a calculating device; cash registers –incorporating a printing device.	225 per unit
8473.30.00	Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 84.70 to 84.72.	98 per unit
	Parts and accessories of automatic data processing machines and units thereof – parts and accessories of the machines of heading 84.71.	98 per unit
Heading 8517 except tariff code 8517.71.00 and 8517.79.00	Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25,85.27 or 85.28.	225 per unit
8518.10.00	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets – microphones and stands therefor.	98 per unit

Miscellaneous Fees and Levies

Fourth Schedule – Goods subject to Eco Levy

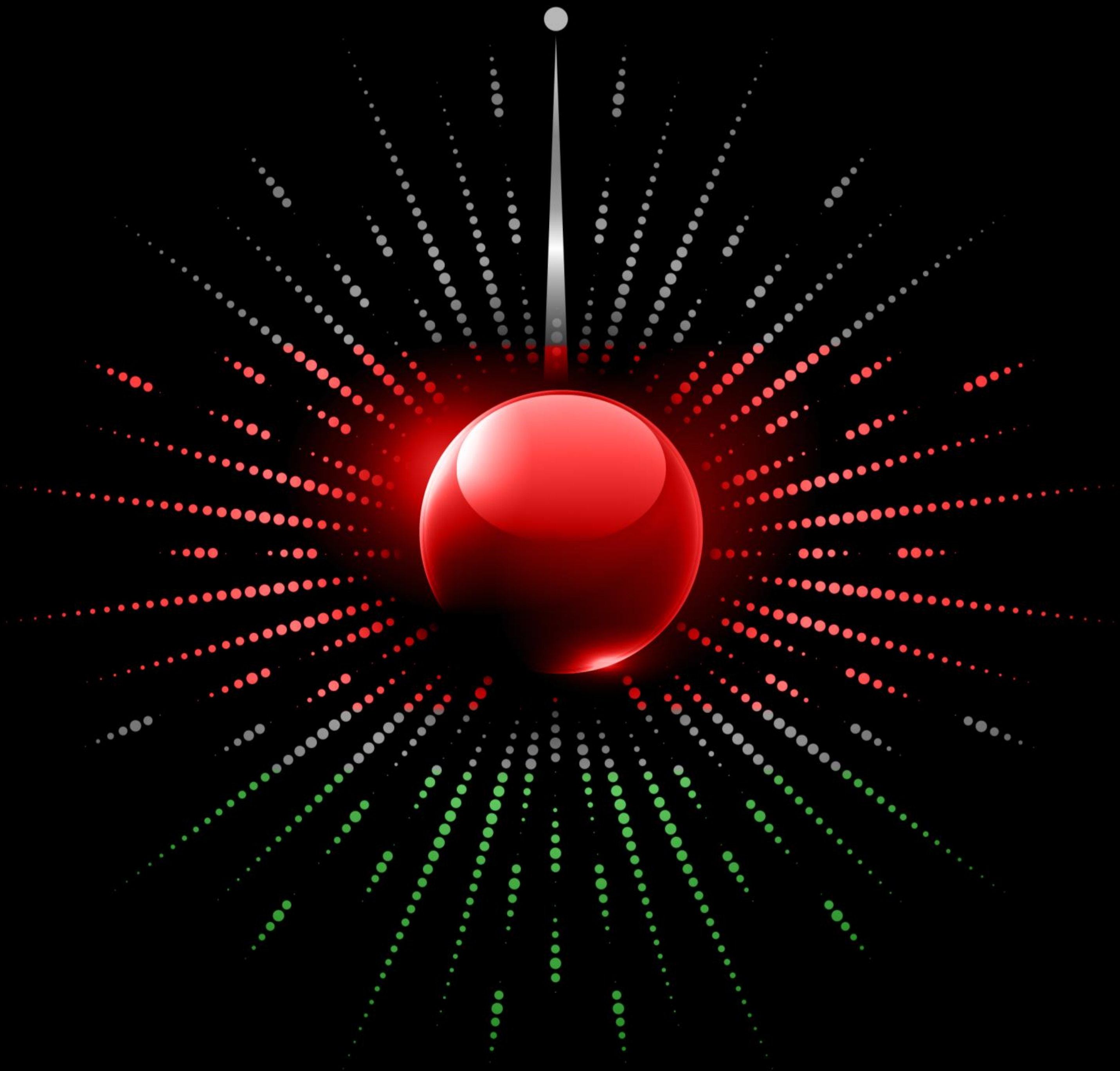
Tariff No.	Tariff description	Proposed Eco Levy rate (KES)
8519.81.00	Sound recording or reproducing apparatus - Using magnetic, optical or semiconductor media.	98 per unit
Heading 8525	Transmission apparatus for radio-broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders.	98 per unit
8526.91.00	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus – other: radio navigational aid apparatus.	98 per unit
Heading 8527	Reception apparatus for radio-broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock.	225 per unit
8528.71.00	Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: not designed to incorporate a video display or screen.	1,275 per unit
8528.72.10	Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: Other in colour - Unassembled	1,275 per unit
8528.73.10	Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: Other, monochrome - Unassembled	1,275 per unit
8528.73.90	Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: Other, monochrome - Other	1,275 per unit
8540.11.00	Cathode-ray television picture tubes, including video monitor cathode-ray tubes - color	1,800 per unit
8540.12.00	Cathode-ray television picture tubes, including video monitor cathode-ray tubes - Monochrome	1,800 per unit
8540.20.00	Television camera tubes; image converters and intensifiers; other photo-cathode tubes	1,800 per unit

Miscellaneous Fees and Levies

Fourth Schedule – Goods subject to Eco Levy

Tariff No.	Tariff description	Proposed Eco Levy rate (Shs)
9030.40.00	Oscilloscopes, spectrum analysers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 90.28; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionising radiations – other instruments and apparatus, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers).	98 per unit
Chapter 40	Rubber tyres	1000 per unit
Chapter 96	Diapers	150 per kg
Chapter 85	Batteries or dry cells	750 per kg
Chapter 39	Plastic packing materials	150 per kg

Tax Administration



Tax Administration

#	Proposed change	Details	Our comments
1.	Information required for electronic tax invoices	• The Bill seeks to amend Section 23A of the TPA by introducing subsection 2A which requires the following information to be captured in an electronic tax invoice: - The words “TAX INVOICE”; - The name, address and PIN of the supplier; - The name, address and PIN (if any) of the purchaser; - The serial number of the tax invoice; - The date and time which the invoice was issued and the date and time which the supply was made, if it is different from the date the tax invoice was issued; - The description of the supply including description of goods or nature of services; - Details of any discount allowed at the time of supply; - Tax rate charged and total amount of tax charged; and - Any other prescribed information. Effective date: 1 July 2024	• The main objective of the proposed amendment is to streamline the information provided in an electronic tax invoice, particularly taking note that the proposed amendment aligns with the requirements provided under the Tax Procedures (Electronic Tax Invoice) Regulations, 2024. • In addition, the proposal aims to improve overall compliance by standardizing invoicing requirements and eliminating loopholes for invoice fraud.

Tax Administration

#	Proposed change	Details	Our comments
2.	Relief because of doubt or difficulty in recovery of tax	• The Bill proposes to introduce Section 37E to the TPA to provide for relief because of doubt or difficulty in recovery of tax where the Commissioner determines that:- − It may be impossible to recover an unpaid tax; − There is undue difficulty or expense in the recovery of unpaid tax; − There is hardship or inequity in relation to the recovery of an unpaid tax; or − There is any other reason occasioning inability to recover the unpaid tax. • In what is seen to be measures aimed at preventing abuse of power to abandon tax and enhancing transparency, the following proposals have been included in the proposed amendment: - For the Commissioner to abandon the tax, there must be prior written approval from the Cabinet Secretary for National Treasury and Economic Planning ("CS"); - The CS may direct the Commissioner to take an action that they may deem fit or obtain directions of the Court in relation to the case; - The Commissioner is required to submit a report to the CS showing details of the amount of taxes that has been abandoned; - The CS is required to submit the report submitted by the Commissioner to the National Assembly. Effective date: 1 July 2024	• Key to note is that a similar provision was repealed vide the Finance Act, 2023. In our view, re-introduction of the provision is a welcome move since there could be circumstances that genuinely warrant abandonment of taxes. • Similar to the re-introduction of this provision, we recommend that the provision for remission of penalties and be re-introduced to ensure that genuine cases that may require waiver of penalties and interest are not locked out.

Tax Administration

#	Proposed change	Details	Our comments
3.	Validity of an Agency Notice	• The Bill proposes to amend Section 42 of the TPA to: – Introduce subsection 2A which clarifies that an agency notice issued under Section 42 (2) shall have a validity period of one year; – Clean-up subsection 13 to refer to a 'person' as opposed to a 'taxpayer'; and – Delete subsection 14 (e) which restricts the Commissioner from issuing agency notices where a person has not exhausted their right to appeal before the Tribunal or courts. **Effective date: 1 July 2024**	• The proposal to legislate a validity period with respect to agency notices issued by the Commissioner is welcome to the extent that it provides certainty and ensures that taxpayers are not indefinitely burdened by agency notices. This further acknowledges the undue harm occasioned by indefinite / prolonged restrictions imposed on taxpayers' assets. • Be that as it may, a one-year validity period may still be too long, and a 6-month period may be more ideal. • The proposed deletion of subsection 14 (e), however, may be injurious to taxpayers as it exposes them to agency notices even where the channels of appeal against an unfavorable decision from the Tribunal or Court are yet to be exhausted. If this proposal is passed, taxpayers may need to be acting swiftly in seeking conservatory orders where a decision is issued by the Tribunal in favor of the Commissioner. In absence of such orders, the Commissioner will be empowered to enforce agency notices even where there is an appeal at the High Court.
4.	Penalties for failure to withhold or remit WHT	• The Bill proposes to repeal Section 42A (4C) and (4D) and introduce a new subsection 4C which imposes a penalty of 10% of the amount not withheld or remitted. Currently, Section 42A (4C) and (4D) similarly provide for a penalty of 10%, albeit pegged on conviction. **Effective date: 1 July 2024**	• The proposed amendment seeks to remove conviction as a pre-requisite for application of the 10% penalty for failure to withhold or remit a tax to be withheld. • Where this is passed into law, it would empower the Commissioner to impose the penalty prior to conviction before a court of law. Taxpayers are encouraged to remain compliant with their withholding tax obligations to avoid unnecessary penalties.

Tax Administration

#	Proposed change	Details	Our comments
5.	Refund application period for income tax and other taxes	• The Bill proposes to delete subsection 1 of Section 47 of the TPA, and replace it with a new Section 47 (1) to read as follows: *"Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner in the prescribed form to offset the overpaid tax against the taxpayer's **outstanding tax debts** and future tax liabilities; or for a refund of the overpaid tax-* *a) In the case of income tax, within five years from the date on which the tax was overpaid; or* *b) In the case of **any other tax**, within six months from the date on which the tax was overpaid.* Effective date: 1 July 2024	• The change seeks to limit applications for refund / offset to within six months from the date of the overpayment, save for refunds in relation to income tax for which the period is retained at five years. • The reduced refund timeframe, for other taxes save for income taxes, may ultimately be injurious to taxpayers, particularly in instances where a tax is identified as overpaid outside the refundability window. If this is passed into law, it is recommended that taxpayers remain vigilant by tracking the period to ensure that they are not locked from applying for refund of overpaid tax on account of being time barred.

Tax Administration

#	Proposed change	Details	Our comments
6.	Notices of objection not validly lodged	• The Bill proposes to amend subsection 4A of Section 51 of the TPA to disallow any invalidly lodged objections where a taxpayer fails to provide information requested by the Commissioner. • The Finance Act, 2023 amended subsection 4 of Section 51 to grant taxpayers a grace period of 7 days to provide information required in the course of the Commissioner's review of the taxpayers' objection. Where the Commissioner fails to provide the information within the required timeframe, the Commissioner is required to adhere to the objection review timelines and provide an objection decision within sixty days of the notice of objection. Effective date: 1 July 2024	• The proposed change is likely purposed at introducing efficiency to the objection review process, especially where the taxpayer fails to provide requested information within good time. • There may be need to relook at this provision since it is likely to be abused especially where the Commissioner requests for information that may be, practically, impossible to get. It may be seen as an avenue where the Commissioner is not required to issue a decision which may further complicate the appeal process.

Tax Administration

#	Proposed change	Details	Our comments
7.	Extension of the objection decision period	• The Bill proposes to amend Section 51 (11) of the TPA, granting the Commissioner an extension of time within which to make an objection decision from 60 to 90 days. Effective date: 1 July 2024	• This proposal may offer some leeway to the Commissioner in terms of offering more time and resource to the deliberation of objection decisions and result in decisions that are well thought-out. Arguably, the period within which the taxpayer is required to object to an assessment should also be increased from the current 30 days for equity. • Notwithstanding the proposal's intent, there is a risk not only of decelerating the issuance of objection decisions, but also of encouraging complacency on the part of the Commissioner and further restricting business continuity.

Tax Administration

#	Proposed change	Details	Our comments
8.	Integration of electronic invoicing systems	• The Bill proposes to introduce subsection 1A to Section 59A of the TPA, empowering the Commissioner to require a person to integrate their electronic tax system authorized under Section 75 to the Commissioner's data management and reporting system for the purposes of submission of electronic documents, including detailed transactional data. • The proposal goes further to impose a penalty, via the introduction of subsection 5, of a fine not exceeding KES 2,000,000 for every month or part thereof that non-compliance continues. • A newly introduced subsection 6 imposes the same penalty where the Commissioner has notified those persons responsible for submitting documents through the Commissioner's system in accordance with subsection 2 of Section 59A. Effective date: 1 July 2024	• Although this proposal seeks to prioritize digital rather than manual data management channels in order to improve the efficiency of data analysis, the proposal may prove unpopular among taxpayers due to data privacy and security concerns. • The requirement to integrate taxpayer systems with the Commissioner's electronic invoicing system may also present a myriad of challenges in relation to the administrative burden on taxpayers as well as in instances of incompatibility or breakdown of any one or both of the systems involved. • Additionally, considering the nature of offence, the penalties imposed at KES 2,000,000 per month are overly excessive. It may be beneficial to consider a fixed penalty figure as opposed to one levied on a monthly basis and one that provides a range to avoid excessive penalties and abuse of discretion respectively. Alternatively, where a monthly penalty is desired, the same should be revised downward.

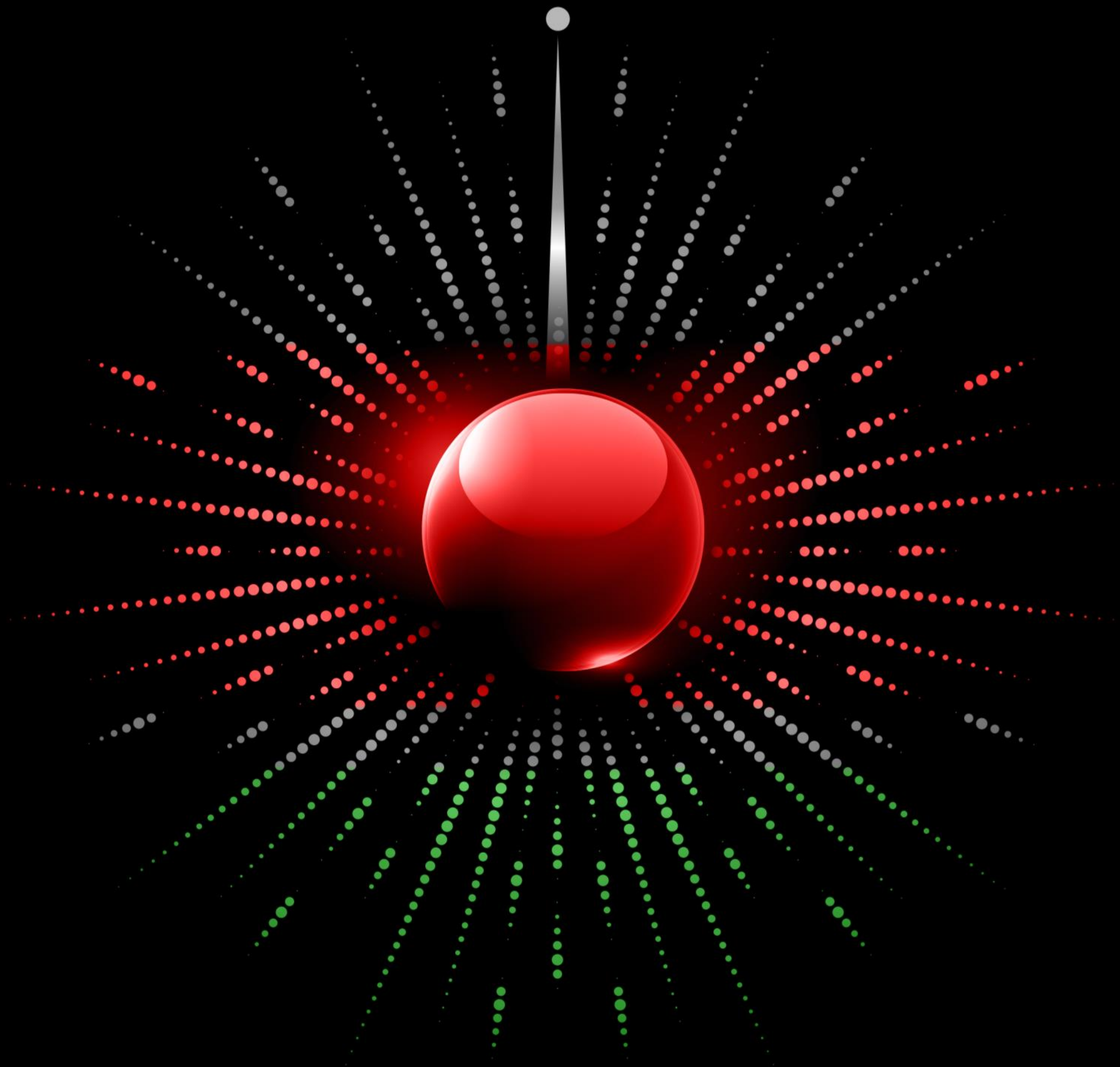
Tax Administration

#	Proposed change	Details	Our comments
9.	Computation of due dates for submission and payment	• The Bill proposes to repeal Section 77 of the TPA and to replace the same with a new Section 77 which: – Excludes Saturdays, Sundays and public holidays in computing the period for performing an action under a tax law, inclusive of submitting or lodging a tax return, payment of tax etc. – Repeals the proviso presently offering a distinction between taxpayers making submissions and payments electronically versus via alternative means. **Effective date: 1 July 2024**	• The proposed amendments, if enacted, will streamline the application of Section 77 to all taxpayers, irrespective of the manner in which a taxpayer performs an action required under a tax law, i.e., whether via electronic means or otherwise.
10.	Penalties for failure to file returns by Export Processing Zones	• The Bill proposes to delete the daily KES 2,000 late return submission penalty prescribed in the Income Tax Act that applies to entities that operate within Export Processing Zones (EPZs) and introduce a new subsection 1A to Section 83 of the TPA, to prescribe a penalty for late submission and failure to submit returns on export processing zones of KES 20,000 per month for each month or part thereof that the failure continues. **Effective date: 1 July 2024**	• The KES 2,000 daily penalty was quite punitive, and the proposed deletion of the penalty and introduction of a KES 20,000 monthly penalty is a welcome move. • The removal of the penalty provision from the Income Tax Act is consistent with other tax administration proposals, which are all being migrated to the Tax Procedures Act, 2015.

Tax Administration

#	Proposed change	Details	Our comments
11.	PIN requirement for remote workers	• The Bill proposes to introduce paragraph 16 to the First Schedule of the TPA to require registration for a KRA PIN of an employee working remotely outside Kenya, for an employer in Kenya. Effective date: 1 July 2024	• Having previously been a gap in tax law, the proposed amendment is aimed at acknowledging emerging employment arrangements and widening the tax net accordingly. • This proposal serves as proof of the intention to devise progressive tax laws which keep up with modern developments and result in a forward-looking tax landscape.

Other measures



Other measures

We outline other proposed measures as below.

#	Proposed change	Details	Our comments
1.	Changes to the Data Protection Act	• The Bill proposes to introduce an amendment after Section 51(2), adding a new paragraph (ba) immediately after paragraph (b), which seeks to align aspects of the Data Protection Act with the Tax Procedures Act 2015 (TPA). • This amendment seeks to exempt tax authorities from certain data protection regulations when disclosure is necessary for the assessment, enforcement or collection of any tax or duty under a written law. Effective date: 1 July 2024	• The amendment exempts tax authorities from certain data protection regulations when collecting information to enforce tax compliance. This exemption allows tax officials unfettered access to data for tax enforcement purposes without being bound by all data protection rules outlined in the legislation. • This raises concerns about the potential misuse of taxpayers' data. Without the full application of data protection rules, there is a risk that taxpayers' information could be mishandled or abused, potentially compromising individuals' privacy and data security.
2.	Changes to the Industrial Training Act	• The Bill seeks to amend Section 5B of the Industrial Training Act by inserting the word *'' Tax Procedures Act''* , before *''and'' in* Subsection 2 which states ***"For purposes of this Act, the Commissioner-General shall have all the powers conferred on the Commissioner-General by the Kenya Revenue Authority Act (Cap. 469) and Income Tax Act (Cap. 470)***.*"* Effective date: 1 July 2024	• This amendment aims to consolidate the position and mandate of the Commissioner General at the KRA in the administration and collection of the industrial training levy. • By leveraging the skills and experience of the KRA in enforcement, this change is intended to streamline operations and enhance compliance within the industrial training sector.

Other measures

#	Proposed change	Details	Our comments
3.	Changes to the Affordable Housing Act	• The Bill proposes the deletion of section 54 of the Affordable Housing Act, which currently prohibits beneficiaries of the affordable housing units from selling their units. Effective date: 1 July 2024	• This may increase the attractiveness of affordable housing programs to potential buyers, thereby promoting a more dynamic and sustainable affordable housing market. • Investors and developers may be more willing to participate in affordable housing projects if there is an assurance that beneficiaries can eventually sell their units, potentially leading to increased funding and expansion of affordable housing initiatives. • However, this change may impact the Government's strategic agenda of expanding access to dwelling places at affordable cost in the country. This is because some people may be motivated to buy units directly or indirectly on an ongoing basis with a view to resell at a profit. This has the potential to deny those who genuinely need affordable housing for their own use.

Other measures

#	Proposed change	Details	Our comments
4.	Changes to the Kenya Revenue Authority Act	• The Bill proposes to amend the Kenya Revenue Authority Act by removing paragraph 4 from PART II of the First Schedule, to exclude the Civil Aviation Act from the jurisdiction of the revenue authority. Effective date: 1 July 2024	• This move aims at centralizing the administration and collection of levies under the provisions of the Civil Aviation Act. • The exclusion of the Civil Aviation Act from the revenue authority's jurisdiction is most likely motivated by the recognition that aviation-related matters require specialized oversight and regulation by authorities with specific expertise in the aviation industry. • This separation allows for more focused attention on ensuring the efficiency and compliance of players in the aviation sector by combining regulatory efforts with related revenue collection.
5.	Changes to the Kenya Revenue Authority Act	• The Bill proposes to amend the Kenya Revenue Authority Act by removing paragraph 4 from PART II of the First Schedule, to exclude the Civil Aviation Act from the jurisdiction of the revenue authority. Effective date: 1 July 2024	• This move aims at centralizing the administration and collection of levies under the provisions of the Civil Aviation Act. • The exclusion of the Civil Aviation Act from the revenue authority's jurisdiction is most likely motivated by the recognition that aviation-related matters require specialized oversight and regulation by authorities with specific expertise in the aviation industry. • This separation allows for more focused attention on ensuring the efficiency and compliance of players in the aviation sector by combining regulatory efforts with related revenue collection.

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