



Resolute
BUSINESS ADVISORY

TAX **ALERT 2023**

Highlights of the Tax Changes
as per the Finance Act, 2023.

Highlight

The Finance Bill, 2023 was passed by Parliament on 21st June 2023 and assented into law by the President on 26th June 2023 thus becoming an Act of Parliament . The Finance Act has introduced various changes affecting several tax laws including; the Income Tax Act, Excise Tax, Value Added Tax (VAT), the Tax Procedures Act and Miscellaneous levies and Fees Act.

The changes made to the respective Tax Acts will be effective on various dates as from 1 July 2023 to 1 January 2024.

Our detailed analysis of the changes is detailed below

Resolute Business Advisory

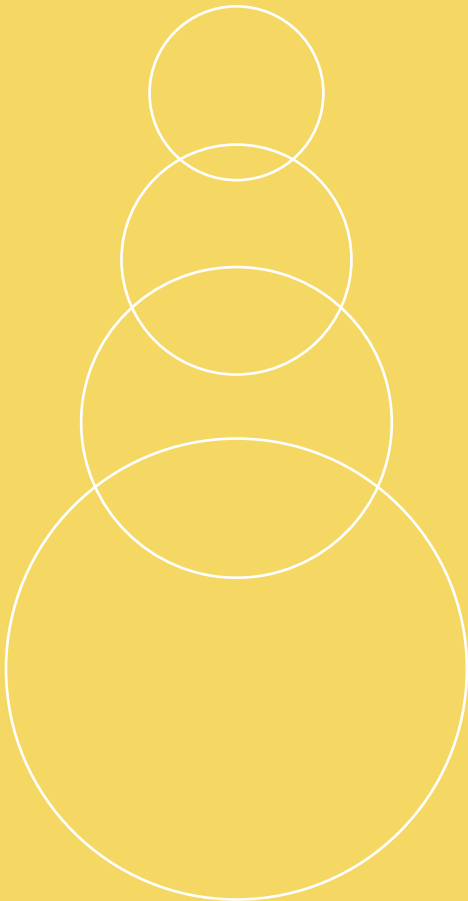
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Committed to the end.



01.

Income Tax



1.1 Corporate Income Tax

1.1.1 Thin Capitalisation - Restriction of Excess interest expense

Interest expense in excess of 30% of EBITDA is still restricted where the loans are from a non-resident person.

The restriction does not apply where interest is on a loan from a resident person or the interest is tax exempt under the Act.

Companies, hitherto exempted, who are engaged in manufacturing and whose cumulative investment in the preceding five years from the commencement of this provision was or is at least five billion shillings, have now been brought into the ambit and are now liable to the restriction subject to the set conditions.

Effective date: 1 January 2024

1.1.2 Expenses not supported by TIMS invoices to be Disallowable

For an expense to be tax deductible, it must be supported by invoices that are generated from an electronic tax invoice management system (TIMS). Except where a transaction has been exempted by the Tax Procedures Act, 2015.

Effective date: 1 January 2024

1.1.3 Turnover Tax (ToT)

The ToT threshold has been revised to include qualifying persons whose turnover is between KShs 1 Million to KShs 25 Million

The turnover upper limit has been reduced from the previous KShs 50 Million

The tax rate has also been increased from the current rate of 1% to 3%

Effective date: 1 July 2023

1.1.4 Club fees and subscriptions

Club fees including entrance and subscription fees are now tax deductible expenses.

However, the same is a taxable benefit of the employee.

Effective date: 1 July 2023

1.1.5 Realised Foreign Exchange losses - Thin Capitalisation

For a thinly capitalised person (whose interest expense paid of payable to a non-resident person (s) exceeds 30% of EBITDA).

Realised forex exchange losses will be deferred and carried forward for a period of five years from the date the loss was realized. Thereafter, if the thin cap position has not reversed, the same will be forfeited.

Effective date: 1 July 2024

1.1.6 Introduction of Taxation of Repatriated Income

a non-resident person carries on business in Kenya through a permanent establishment (P/E) shall pay tax on repatriated income.

Repatriated Income = (Opening net assets + net profit for the year) - closing net assets

Net assets means the total book value of assets less total liabilities for the year of income and shall not include revaluation of assets.

The tax rate for repatriated income is 15%

This is additional tax to the tax already charged to a P/E on its taxable profits.

Effective date: 1 July 2024

... Corporate Income Tax

1.1.7 Imposition of Digital Asset Tax

Digital Asset Tax is payable by a person on income derived from the transfer or exchange of digital assets. The owner of a platform or the person who facilitates the exchange or transfer of a digital asset shall deduct the digital asset tax, remit it and file the supporting with the Commissioner within five days from the date of deduction

A non-resident person who owns a platform on which digital assets are exchanged or transferred shall register under the simplified tax regime

Income derived from the transfer or exchange of a digital asset means the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset.

Digital asset includes

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

The applicable rate is 3% of the transfer or exchange value of the digital asset.

Effective date: 1 September 2023

1.1.9 Trust Income

Payments from registered Trusts on behalf of the beneficiaries exclusively for education, medical treatment and early adulthood housing purposes and any other amount the commissioner may prescribe from time to time are no longer tax exempt.

Effective date: 1 July 2023

1.1.8 Imposition of Tax on Digital Content Monetisation

digital content monetisation" means offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel, in any of the following forms—

- i. Advertisement on websites, social media platforms or similar networks by partnering with brands including endorsements from sellers of such brands;
- ii. Sponsorship where a brand owner pays a content creator for content creation and promotion;
- iii. Affiliate marketing where the content creator earns a commission whenever the audience of the content creator clicks on the product displayed;
- iv. Subscription services where the audience pays a periodic fee to access the content and support the content creator;
- v. Offering for use a logo, brand or catchphrase associated with the content creator merchandise sales eBooks, course or software;
- vi. Membership programmes for exclusive content including early access;
- vii. Licensing the content including photographs, music or other businesses or individuals for use in the user's own projects; or
- viii. A content creator earns a commission or fees from crowd funding.

The applicable rate is 20% for non-residents and 5% for resident persons

Effective date: 1 July 2023

... Corporate Income Tax

1.1.2.0 Imposition of tax on gains & Profits of Businesses operating in a Preferential Tax Regime

The qualifying intellectual property income shall be determined by dividing the research and development expenditures made by the taxpayer, excluding acquisition costs and related party outsourcing costs by the research and development expenditures made by the taxpayer, multiplied by the intellectual property income including royalties, capital gains and any other income from the sale of an intellectual property asset including embedded intellectual property income calculated under transfer pricing principles.

Intellectual Property income is now specified and losses thereof shall be deductible only against Intellectual Property income

Effective date: 1 January 2024

1.1.2.1 Country by Country Reporting (CbCR) - filing of returns

A Kenyan resident Ultimate Parent Entity (UPE) is required to file a country-by country (CBC) report with the Commissioner as stipulated in the CbCR Regulations.

The constituent entities in Kenya of a qualifying Multinational Enterprise Group will be required to file their group CbCR in Kenya where at least one of the following conditions is met:

- i. The ultimate parent entity is not obligated to file a country-by-country report in its jurisdiction of tax residence;
- ii. The jurisdiction in which the ultimate parent entity is resident has a current international tax agreement which Kenya is a party to but does not have a competent authority agreement with Kenya at the time of filing the country-by-country report for the reporting financial year; or
- iii. There has been a systemic failure of the jurisdiction of tax residence of the ultimate parent entity that has been notified by the Commissioner to the constituent entity resident in Kenya.

Effective date: 1 July 2023

1.1.2.2 Taxation of Members' clubs and Trade Associations

Members' clubs and trade association shall be deemed to be carrying on a business and the gross receipts on revenue account (excluding joining fees, welfare contributions and subscriptions) shall be deemed to be income from a business and thus liable to taxation.

Effective date: 1 July 2023

1.1.2.3 Non refund of excess withholding tax to Non-Residents following an audit

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

Effective date: 1 July 2023

1.1.2.4 Vaccine Manufacturers No longer exempt from Income Tax

Companies engaged in the manufacture of human vaccines are no longer exempt from income tax. However, they will now be liable to taxation at a preferential rate of 10%.

Effective date: 1 July 2023

... Corporate Income Tax

1.1.2.5 Additional Exemptions

The following incomes are now tax exempt

- i. Royalties paid to a non-resident person by a company undertaking the manufacture of human vaccines.
- ii. Interest paid to a resident person or non-resident person by a company undertaking the manufacture of human vaccines.
- iii. Investment income from a post-retirement medical fund, whether or not the fund is part of a retirement benefits scheme.
- iv. Income earned by a non-resident contractor, sub-contractor, consultant or employee involved in the implementation of a project financed through a one hundred percent grant under an agreement between the Government and the development partner, to the extent provided for in the Agreement: Provided that the non-resident is in Kenya solely for the implementation of the project financed by the one hundred percent grant.
- v. Gains on transfer of property within a special economic zone enterprise, developer and operator.
- vi. Royalties, interest, management fees, professional fees, training fees, consultancy fee, agency or contractual fees paid by a special economic zone developer, operator or enterprise, in the first ten years of its establishment, to a non-resident person.

Effective: 1 July date 2023

1.1.2.6 Capital Allowances

In relation to the marine sector, a person who invests in an Industrial buildings and Docks is entitled to claim capital allowance at the rate of 10% straight line

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

Effective date: 1 January 2024

1.1.2.7 Accelerated Investment Allowances - 100%

The 100% accelerated Investment allowance is only applicable to hotel buildings, buildings and machinery used for manufacture which are located outside Nairobi and Mombasa

Effective date: 1 January 2024

1.1.2.8 Motor vehicle assembly companies

To continue enjoying reduced corporate income tax rate of 15%, local motor vehicle assembly operations to be extended for a further additional 5 years if the company achieves a local content equivalent to of 50% of the ex-factory price value of the motor vehicles.

local content is defined to mean “parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.”

Effective date: 1 July 2023

... Corporate Income Tax

1.1.2.9 Revision of Advance Tax Rates

| | |
|--|--|
| Vans, pick-ups, trucks, prime movers, trailers and lorries | The higher of KShs 2,500 per tonne load capacity per year or KShs 5,000 per year |
| Saloons, station-wagons, minibuses, buses and coaches | The higher of KShs 100 per passenger per month or KShs 5,000 per year |

Effective date: 1 January 2024

1.1.3.0 Monthly Rental Income

The rate has been reduced from 10% to 7.5%

Effective date: 1 January 2024

1.1.3.1 Mortgage Refinance Companies

The Mortgage refinance companies licensed under the Central Bank of Kenya Act as part of financial institutions have now been listed in the Fourth Schedule to the Income Tax Act. The implication is exemption of interest payments from withholding tax. Further, interest charged on mortgage qualifies as a deduction for owner occupied borrowing.

Effective date: 1 January 2024

1.1.3.2 Reduction of corporate income tax rate for permanent establishment (P/Es)

The tax rate for a non-resident company having a permanent establishment in Kenya has been reduced from 37.5% to 30%

Effective date: 1 January 2024

1.1.3.3 Capital Gains Tax

Elimination of the exemption previously granted to partnerships in respect of gains arising from the transfer of qualifying properties. Consequently, any gains arising from such transfers made by partnerships is now subject to the CGT.

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

Reorganization of Group Structures

A group must have existed for at least twenty-four months before any restructuring or reorganisation is undertaken within the Group for it to enjoy CGT exemption.

Effective date: 1 July 2023

... Corporate Income Tax

1.1.3.4 Clarifications and Definition

- i. Winnings mean the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act, excluding the amount staked or wagered in that transaction
- ii. immovable property includes:
 - a. land, whether covered by water or not, any estate, rights, interest or easement in or over any land and
 - b. Things attached to the earth or permanently fastened to anything attached to the earth, and includes a debt secured by mortgage or charge on immovable property; and
 - c. A mining right, an interest in a petroleum agreement, mining information or petroleum information;
- iii. Related person means, in the case of two persons where a person who participates directly or indirectly in the management, control or capital of the business of another person.
- iv. Ultimate parent entity means an entity which (a) is not controlled by another entity; and (b) owns or controls, directly or indirectly, one or more constituent entities of a multinational enterprise group
- v. "institution, body of persons or irrevocable trust, of a public character" means an entity established to benefit the public in a transparent and accountable manner without restriction or discrimination regardless of the level of charges or fees levied for services rendered, and which utilises its assets or income exclusively to carry out the purpose for which the entity was established without conferring a private benefit to an individual.

Effective date: 1 July 2023

1.2 Employee Taxes (PAYE)

1.2.1 Change of PAYE tax rates and Bands

The PAYE tax rates and bands have been amended as follows:

| Description | Amount per annum (KShs) | Amount per Month(KShs) | Rate |
|--------------|-------------------------|------------------------|-------|
| On the first | 288,000 | 24,000 | 10% |
| On the first | 100,000 | 8,333 | 25% |
| On the first | 5,612,000 | 467,666 | 30% |
| On the first | 3,600,000 | 300,000 | 32.5% |
| Above | 9,600,000 | 800,000 | 35% |

Effective date: 1 July 2023

1.2.2 Affordable Housing Levy -AHL

The affordable Housing Levy -AHL has been imposed under the miscellaneous fees and levies Act through amendment of the Employment Act.

- i. Contribution is 3% of the employee's gross monthly salary. This is shared equally by the employer and the employee (1.5% each).
- ii. The due date is by 9th of the following month
- iii. Kenya Revenue Authority (KRA) has been appointed the collecting Agent.
- iv. Late payment attracts interest at 2% for every month AHL remains outstanding.

Effective date: 1 July 2023

1.2.3 Introduction of Post-retirement Medical Relief

A resident individual who proves that in a year of income the person has contributed to a post-retirement medical fund shall for that year of income be entitled to a personal relief in this Act referred to as the post-retirement medical fund relief.

The deductible relief amount is the lesser of 15% of the actual premium paid and KShs 60,000 per year

Effective date: 1 January 2024

1.2.4 Travelling Allowance

where such an amount is received as a travelling allowance paid to an employee to perform official duties based on the standard mileage rate approved by the Automobile Association (AA) of Kenya it shall be deemed to be reimbursement of the amount so expended and shall not be taxable income.

Effective date: 1 July 2023

1.2.5 Club entrance and subscription fees allowed against an employer are now taxable benefits on the employee

Effective date: 1 July 2023

1.2.6 The tax base for share options is the market value when the options were exercised by the employee

Effective date: 1 July 2023

... Employee Taxes (PAYE)

1.2.7 Taxation of share offers by a start-up company to an employee

Where an employee is offered company shares in lieu of cash emoluments by an eligible start-up, the taxation of the benefit from the shares allocated to that person by virtue of employment shall be deferred and taxed within thirty days of the earlier of:

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

Provided that—

- i. This subsection shall not apply to any cash emoluments or other benefits in kind offered to an employee by virtue of the employment;
- ii. The benefit shall be deemed to accrue at the earlier of the occurrence of the events contemplated in paragraphs (a), (b) or (c);
- iii. The value of the taxable benefit shall be the fair market value of the shares at the earlier of the occurrence of the events contemplated in paragraphs (a), (b) or (c); or
- iv. Where the fair market value is not available, the Commissioner shall determine the value of the shares based on the last issued financial statements.

“eligible startup company” means a business incorporated in Kenya that:

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

Effective date: 1 January 2024

1.3 Withholding Tax

1.3.1 Imposition of withholding

- Digital content monetization - at the rate of 20%
- Sales promotion, marketing and advertising services at the rate of 20% for non-residents and 5% for resident persons

Effective date: 1 July 2023

1.3.2 Appointment of withholding rental income tax agents

A person who receives rental income on behalf of the owner of the premises and has been appointed by the Commissioner in writing for that purpose shall deduct tax therefrom.

The tax so deducted shall be remitted to the Commissioner within five working days after the deduction was made. This has to be accompanied with a return in writing of the tax deducted and such other information as the Commissioner may require upon which a certificate will be issued.

Effective date: 1 July 2023

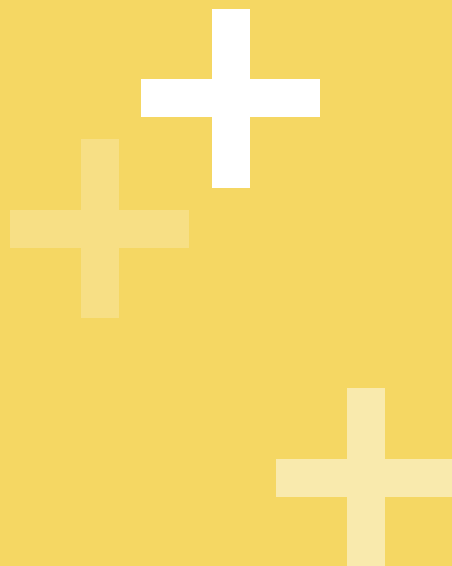
1.3.2 Change of due date for remitting withholding Tax

Withholding tax is now due within five working days after the date of deduction

Effective date: 1 July 2023

02.

Value Added Tax (VAT)



02 Value Added Tax

2.1 Petrol, Diesel and Liquefied Petroleum Gas (LPG)

The VAT rate for petroleum products (petrol and diesel) which was hitherto charged at 8% has been increased to 16%.

On the other hand Liquefied Petroleum Gas (LPG) has now been zero-rated.

Effective date; 1 July 2023

2.2 Place & Time of Supply)

The VAT Act is amended to bring clarity and the scope of determining whether a supply of services is considered to have been made or supplied in Kenya. A service is deemed to have been supplied in Kenya even if the supplier is a non-resident, but the recipient of the services (customer) is a resident

Effective date; 1 July 2023

2.3 Imposition of VAT on Insurance Compensation

Where a bona fide owner of taxable supplies, who has deducted input tax under subsection is compensated for the loss of the taxable supplies, the compensation shall be treated as a taxable supply and

- a. If the compensation includes value added tax, the compensation shall be declared and the value added tax thereon remitted to the Commissioner; or
- b. If the compensation does not include value added tax, the compensation shall be declared and subjected to value added tax and the tax thereon remitted to the Commissioner.

Effective date; 1 July 2023

2.4 Claim of VAT refund on account of bad debts

A person can lodge a claim for VAT refund on account of bad debts where;

- a. He has made a supply to a customer and accounted for VAT thereon, but;
- b. He has not received any payment after three years for that supply or the Customer has been placed under statutory management through the appointment of an administrator, receiver, or liquidator

The claim should be lodged from the third year but not after ten years from the date of supply.

The amount claimable may be credited to the taxpayer's record for use against future value added tax liabilities;

Where the tax refunded is subsequently recovered from the recipient of the supply, the registered person shall refund the tax to the Commissioner within sixty days of the date of recovery;

If the payment is not made within the time specified, an interest of two per cent per month or part thereof of the tax refunded shall forthwith be due and payable and the interest shall not exceed one hundred per cent of

Effective date; 1 July 2023

2.5 VAT Registration - Digital Service Providers

A person supplying imported digital services over the internet, an electronic network or through a digital marketplace shall register for VAT whether or not the taxable supplies meet the turnover threshold of five million shillings

Effective date; 1 July 2023

2.6 Place of Record Keeping

For purposes of the VAT Act, a person is required to keep in the course of his business, a full and true written record, whether in electronic form or otherwise, in English or Kiswahili of every transaction he makes.

Previously the records were supposed to be kept in Kenya but the Act is now amended to remove this restriction and the records can be kept anywhere.

Effective date; 1 July 2023

... Value Added Tax

2.7 Change of VAT Status)

2.7.1 Standard rate to Exempt

| Description of the supply | Prior rate/status | New status |
|---|-------------------|------------|
| 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. | 16% | Exempt |
| Plant and machinery of chapter 84 and 85 locally purchased by manufacturers of pharmaceutical products or investors in the manufacture of pharmaceutical products upon the recommendation of the Cabinet Secretary responsible for matters relating health. | 16% | Exempt |
| Taxable supplies made to or by a school feeding programme recognized by the Cabinet Secretary responsible for matters relating to education. | 16% | Exempt |
| Aircraft and aircraft parts covered under Chapter 88 which include aircrafts, spacecraft, flight simulators and all parts thereof | 16% | Exempt |

Effective date: 1 July 2023

2.7.2 Exempt to Zero-rated

| Description of the supply | Prior rate/status | New status |
|--|-------------------|------------|
| The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight: Provided this paragraph shall be in operation for a period of six months from the date of assent. | Exempt | Zero-rated |
| The exportation of taxable services. | Exempt | Zero-rated |
| Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel) | Exempt | Zero-rated |
| Liquefied Petroleum Gas. | Exempt | Zero-rated |

Effective date: 1 July 2023

... Value Added Tax

2.7 Change of VAT Status)

2.7.3 From standard rated to zero-rated

| Description of the supply | Prior rate/status | New status |
|--|-------------------|------------|
| Inbound international sea freight offered by a registered person. | 16% | 0% |
| All tea and coffee locally purchased for the purpose of value addition before exportation subject to approval by the Commissioner-General. | 16% | 0% |
| The supply of locally assembled and manufactured mobile phones. | 16% | 0% |
| The supply of motorcycles of tariff heading 8711.60.00 | 16% | 0% |
| The supply of electric bicycles. | 16% | 0% |
| The supply of solar and lithium ion batteries. | 16% | 0% |
| The supply of electric buses of tariff heading 87.02. | 16% | 0% |
| Inputs or raw materials locally purchased or imported for the manufacture of animal feeds.. | 16% | 0% |

Effective date: 1 July 2023

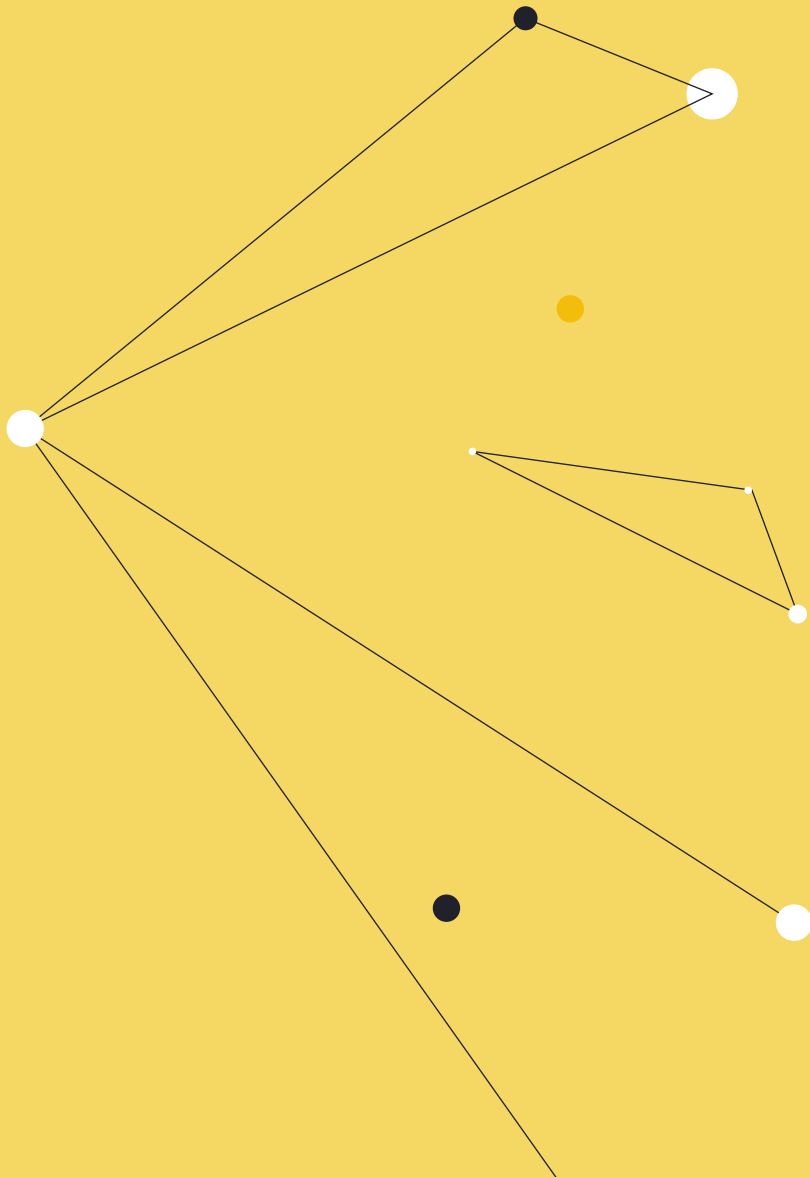
2.7.4 From exempt to standard rated

| Description of the supply | Prior rate/status | New status |
|--|-------------------|------------|
| Fetal Doppler-Pocket (Wgd-002) Pc and pulse oximeter-finger held (Gima brand) Pc of tariff number 9018.19.00 upon approval by the Cabinet Secretary responsible for matters relating to health | Exempt | 16% |

Effective date: 1 July 2023

03.

Excise Tax



03. Excise Tax

3.1 Adjustment for Inflation

The section which gave the Commissioner powers to make adjustments to the specific rate of Excise Duty to account for inflation, subject to the Cabinet Secretary's approval has been repealed

This means that Excise Duty rates shall remain fixed, until amended through a Finance Act, regardless of changes in inflation and economic circumstances.

Effective: 1 July date 2023

3.2 Suspension of the excise license

Clarification on the timeframe within which the Commissioner may suspend or revoke an excise licence.

Upon lodging and appeal following the suspension of the licence, the Commissioner shall provide the licensed person with a written notice of the action required to be taken before the date specified in the notice being not less than fourteen days to remedy the deficiencies that led to the suspension. Thereafter revoke the suspension if action is not taken within the specified time.

Effective: 1 July date 2023

3.3 New Additional offences

A person who commits the following offences is liable, upon conviction, to a fine not exceeding five million shillings or imprisonment for a term not exceeding three years, or both;

- i. Defaces or prints over an excise stamp affixed on any excisable goods or package;
- ii. Knowingly is in possession of excisable goods on which excise stamps have not been affixed and which have not been exempted from the requirements of the excise Act or Regulations made thereunder;
- iii. Acquires or attempts to acquire an excise stamp without the authority of the Commissioner;
- iv. Prints, counterfeits, makes or in any way creates an excise stamp without the authority of the Commissioner;
- v. Knowingly is in possession of an excise stamp which has been printed, made or in any way acquired without the authority of the Commissioner;
- vi. Knowingly is in possession of, conveys, distributes, sells, offers for sale or trades in excisable goods without affixing excise stamps in accordance with this Act or Regulations made under this Act; or
- vii. Is in possession of, conveys, distributes, sells, or trades in excisable goods which have been affixed with counterfeit excise stamps.

Effective: 1 July date 2023

3.4 Payment of excise tax within 24 Hours

Excise tax shall be payable to the Commissioner within twenty-four hours by;

- i. Licensed manufacturer of alcoholic beverages, upon removal of the goods from the stockroom
- ii. Betting and gaming, offered through a platform or other medium, from the closure of transactions of the day

Further the Commissioner is empowered, by notice in the Gazette, to require taxpayers in any sector to remit excise duty collected on certain excisable services within twenty-four hours from the closure of transactions of the day.

For the purposes of this section, "closure of transactions of the day" means midnight of that day.

Effective: 1 July date 2023

... Excise Tax

3.5 Imposition of Excise tax

| Description of the supply | New Rate |
|---|---|
| Imported fish | 10% |
| Powdered juice. | Shs. 25 per kg |
| Imported sugar excluding imported sugar purchased by a registered pharmaceutical manufacturer. | Shs. 5 per kg |
| Imported cement | 10% of the value or shs. 1.50 per kg, whichever is higher |
| Imported furniture of tariff heading 9403 excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin | 30% |
| Imported cellular phones | 10% |
| Imported paints, varnishes and lacquers of heading 3208, 3209 and 3210 | 15% |
| Imported non- virgin test liner of heading 4805.24.00 | 25% |
| Imported non-virgin fluting medium of heading 4805.19.00 | 25% |
| Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90; | 25% |
| Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 | 25% |
| Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00 | 25% |
| fees charged on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions | 15% |

Effective: 1 July date 2023

... Excise Tax

3.6 Change of Excise tax rates

| Description of the supply | Current Rate | New Rate |
|--|---------------|----------|
| Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products) | 25% | 35% |
| Imported Alkyd | 10% | 20% |
| Imported Unsaturated polyester | 10% | 20% |
| Imported Emulsion VAM | 10% | 20% |
| Imported Emulsion - styrene Acrylic | 10% | 20% |
| Imported Homopolymers | 10% | 20% |
| Imported Emulsion B.A.M. | 10% | 20% |
| Telephone and internet data services | 10% | 20% |
| Fees charged for money transfer services by banks, money transfer agencies and other financial service providers | 20% | 15% |
| Fees charged for money transfer services by cellular phone service providers or payment service providers licensed under the National Payment System Act, 2011 | 12% | 15% |
| Amount wagered or staked | 7.5% | 12.5% |
| Gaming of the amount wagered or staked | 7.5% | 12.5% |
| Price competition of the amount paid or charged to participate in a prize competition | 7.5% | 12.5% |
| Lottery (excluding charitable lotteries) of the amount paid or charged to buy the lottery ticket | 7.5% | 12.5% |
| Importation of cellular phones | 10% | - |
| Disassembled or unassembled kits for local assembly or manufacture mobile phones | 10% | - |
| Condensates per 1000l @ 20degC | Shs. 6,868.94 | - |
| Locally manufactured articles of plastic of tariff heading 3923.30.00 and 3923.90.90 | 10% | - |

Effective: 1 July date 2023

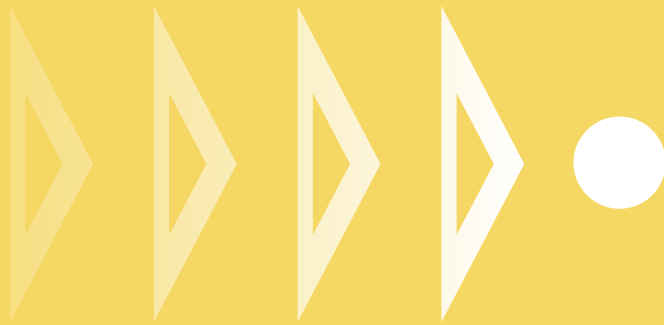
3.6 Definitions

Gaming has been included in the definition of the term wagered or staked amount. Wagered or Staked" means the amount of money placed by a person for an outcome in a betting transaction

Effective: 1 July date 2023

04.

Tax Procedures Act



04 Tax Procedures Act

4.1 Waiver of penalties and interest

the Commissioner shall refrain from recovering penalties or interest on tax debt where a person had paid all the principal tax due before the 31st December, 2022.

Where all the principal tax due had not been paid before the 31st December, 2022, a person shall apply to the Commissioner for an amnesty of interest or penalties on the unpaid tax, and propose a payment plan for the outstanding amount .

For a person to enjoy the amnesty, the principal tax must be paid in full by 30 June 2024

A tax avoidance penalty imposed following an assessment by the Commissioner on a tax avoidance provision, is not eligible to this waiver.

Effective date: 1 September 2023

4.2 Agency Notices

The Commissioner shall not issue an Agency Notice under this section unless—

- a. The taxpayer has defaulted in paying an instalment under section 33(2);
- b. The Commissioner has raised an assessment and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period;
- c. The taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines;
- d. The taxpayer has made a self-assessment and submitted a return but has not paid the taxes due before the due date lapsed; or
- e. The taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.

Effective date: 1 July 2023

4.3 Remittance of Withholding VAT

The date for remitting withholding VAT to KRA has been changed from the previous 20th of the following to within five working days after the deduction was made.

Effective date: 1 July 2023

4.4 Appointment of rental income Withholding Tax Agents

The Commissioner is empowered to appoint an agent for the purpose of the collection and remittance of rental income tax to the Commissioner.

The appointment may be revoked at any time by the Commissioner.

Effective date: 1 July 2023

4.5 Utilisation of overpaid taxes against existing liability

The Act now provides for the offsetting of overpaid taxes against outstanding tax debts and future tax liability.

Further, the timeframe within which the Commissioner shall refund the overpaid tax has been reduced from two years to six months from the date of ascertainment. The overpaid tax shall be applied to offset the taxpayer's outstanding tax debt or future tax liabilities.

Where application has been subjected to an audit under subsection (4), the Commissioner shall ascertain and determine the application within one hundred and twenty-days failure to which, the application shall be deemed to have been ascertained and approved

Effective date: 1 July 2023

... Tax Procedures Act

4.6 **Objection to Tax decision**

Where the Commissioner has determined that a notice of objection lodged by a tax payer has not been validly lodged, the Commissioner shall within a period of fourteen days notify the taxpayer in writing that the objection has not been validly lodged, and if passed, will now be able to request the tax-payer to submit the information specified in the notice within seven days after the date of the notice.

And where a taxpayer fails to provide information required or fails to provide the information within a specified period, the Commissioner may make an objection decision within sixty days after the date on which the notice of objection was lodged.

Effective date: 1 July 2023

4.7 **Increased timelines for Alternative Dispute Resolution (ADR)**

The timelines within which the parties are allowed to negotiate and potentially settle disputes under the Alternative Dispute Resolution (ADR) framework has been increased from the current 90 days to 120 days.

Effective date: 1 July 2023

4.8 **Establishment of a data management and reporting system**

The Commissioner may establish a data management and reporting system for the submission of electronic documents including detailed transactional data relating to those documents.

The Commissioner shall notify in writing the persons required to submit electronic documents through the system established.

The electronic documents referred to include;

- a. Electronic invoice returns of payments made by a person in the ordinary course of business where goods were exchanged for consideration by a person not employed in the business;
- b. For payments made by a person in the ordinary course of business where services were rendered, or in anticipation of services to be rendered, by a person not employed in the business;
- c. For periodical or lump sum payments in respect of a royalty; or
- d. For such other commercial or financial transaction as may be designated by the Commissioner.

For the purposes of this section, "transactional data" includes:

the names and addresses of each person to whom a payment was made;

Where the payment is for services, the amount of the payment specifying whether the payment is a commission of any kind or is for expenses incurred in connection with rendering the services;

Where the payment is in any form of valuable consideration other than money, the particulars of the consideration; and such other particulars as the Commissioner may specify;

references to payments for services include references to payments in the nature of commission of any kind and references to payments in respect of expenses incurred in connection with the rendering of services; and references to the making of payments include references to the giving of any form of valuable consideration, and the requirement imposed to state the amount of a payment shall, in relation to any consideration given otherwise than in the form of money, be construed as a requirement to give particulars of the consideration

Effective date: 1 September 2023

... Tax Procedures Act

4.9 Penalties for non-compliance with an electronic tax system

Where a tax law requires a taxpayer to issue an electronic tax invoice, submit a tax return in electronic form or pay a tax electronically, and the taxpayer fails to comply with that tax law, the Commissioner shall issue a notice in writing to the taxpayer requesting the reasons for the noncompliance. Where the reasons given do not satisfy the Commissioner, the taxpayer shall be liable to a penalty of two times the tax due.

Effective date: 1 September 2023

4.10 Commissioner loses power to waive penalties and interest

Previously a person liable to a penalty or interest could apply in writing to the Commissioner for the remission of the penalty or interest payable and the Commissioner could review and waive the same.

This section has been repealed. Consequently, a taxpayer cannot apply and the Commissioner has lost power to waive. The implication is that all accrued penalties and interest shall be payable.

Effective date: 1 July 2023

4.11 Penalties for impersonation

A person who is not an authorised officer commits an offence if that person assumes the name or designation of an authorised officer and performs or procures the performance of any act which that person is not entitled to do.

A person convicted of an offence for impersonation shall be liable to imprisonment for a term not exceeding three years.

Effective date: 1 July 2023

4.12 Recognition of International Tax Agreements

Any multilateral agreement or treaty that has been entered into by or on behalf of the Government of Kenya relating to mutual administrative assistance in the collection of taxes shall have effect in the manner stipulated in such agreement or treaty

Effective date: 1 July 2023

4.13 Tax refund decision

A tax refund decision is now not a tax decision which an objection can be made to the commissioner. A refund decision will now be an appealable directly to the Tax Appeals Tribunal

Effective date: 1 July 2023

4.14 Record Keeping by a Trustee

A trustee resident in Kenya who administers a trust registered inside or outside Kenya is required to maintain and avail to the Commissioner records required under a tax law, whether the income generated is subject to tax in Kenya or not.

Effective date: 1 July 2023

... Tax Procedures Act

4.15 Establishment of an electronic tax invoice system

The Commissioner is empowered to establish an electronic tax system for issuing tax invoices and keeping records of stocks.

Once established, resident persons carrying on business will be required to issue invoices or maintain stock records on the electronic system.

The electronic tax invoice referred may exclude emoluments, imports, investment allowances, interest, airline passenger ticketing and similar payments.

Effective date: 1 September 2023

4.16 Mutual Administrative assistance in the recovery or collection tax claims

The Commissioner is empowered to recover or collect a tax claim pursuant to an international tax agreement as contemplated. This is following a request by the competent authority of a party to the international tax agreement.

The request shall be in respect of a tax claim which forms the subject of the international tax agreement permitting its enforcement in the requesting party and, unless otherwise agreed between the parties, which is not contested

Effective date: 1 July 2023

4.17 Repeal of the Commissioner Tax Abandonment Powers

The powers granted to the Commissioner in the circumstances where the Commissioner determines that (a) it may be impossible to recover an unpaid tax, (b) there is undue difficulty or expense in the recovery of an unpaid tax, (c) there is hardship or inequity in relation to the recovery of an unpaid tax or (d) there is any other reason occasioning inability to recover the unpaid tax has been repealed.

Effective date: 1 July 2023

05.

Miscellaneous Fees And Levies Act

05 Miscellaneous Fees And Levies Act

5.1 Imposition of Affordable Housing Levy (AHL)

The Employment Act has been amended and introduced the affordable Housing levy contribution at 3% of the employees gross pay is shared equally between the employee and employer (1.5% each)

The amount is withheld by an employer and remitted to KRA by 9th of the following month.

Effective date: 1 July 2023

5.2 Import Declaration Fees, and Railway Development Levy

- a. Reduction of IDF from 3.5% to 2.5% and RDL from 2% to 1.5%
- b. Exemptions from IDF and RDL:
 - i. Raw materials and intermediate products imported by manufacturers and input for the construction of houses under the Affordable Housing Scheme
 - ii. Goods for official use by the diplomatic, the United Nations and entities exempted under the Privileges and Immunities Act
 - iii. All goods and supplies to the Kenya Defence Forces,
 - iv. Liquefied petroleum gas (LPG),
 - v. And all aircraft and aircraft parts covered under Chapter 88.

Effective date: 1 July 2023

5.3 Imposition of Export and Investment Promotion Levy

The Act is amended to impose an Export and Investment Promotion Levy on some imported goods into the country except on goods originating from the EAC Partner States that meet the EAC Rules of Origin. Some of the goods liable to the levy include steel products under Tariff 7213.91.10, 7213.91.90, and 7207.11.00. at 17.5%, cement clinker at 17.5% and certain paper products under Tariff head 4804 and 4819 at 10%.

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Committed to the end

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