Tax Alert

Highlights of the Tax Laws (Amendment) Bill, 2024 and Tax Procedures (Amendment) (No. 2) Bill, 2024

The Tax Laws (Amendment) Bill, 2024 and The Tax Procedures (Amendment) (No.2) Bill, 2024 (together "the Bills") were presented on 4 November 2024 to the National Assembly for consideration.

The Bills propose to amend various Laws which include: the Income Tax Act, CAP. 470 ("ITA"), Value Added Tax Act, CAP. 476 ("VAT Act"), Excise Duty Act, CAP. 472, Tax Procedures Act CAP. 469B ("TPA"), and the Miscellaneous Fees and Levies Act CAP. 469C ("MFLA").

Some of the key amendments proposed by the Bills include:-

- The introduction of new employment tax reliefs ranging from increase in the tax-free thresholds to tax reliefs for contributions to the Social Health Insurance Fund and Affordable Housing Levy. These reliefs will be welcomed given the inflationary impact on taxpayer wages over the years.
- The imposition of withholding tax on goods supplied to public entities. The introduction of a tax on goods within the Income Tax Act is a trend of shifting the focus of the Income Tax Act from the taxation of income to a turnover tax system.
- Another amendment to the digital services tax which is now replaced with the significant economic presence tax. This is the fifth proposed amendment that has been introduced in respect of the digital services tax in the last four years demonstrating the uncertainty of tax policy around digital platforms.
- The trend of increasing the Commissioners powers and constraining taxpayer's rights continues under the Tax Procedures Act. The amendments to integrate taxpayer's systems with the Commissioners may intrude on taxpayer's privacy.
- Exemption of "transfer of a business as a going concern" from VAT which provides a welcome relief to taxpayers pursuing business restructuring, as they will not be required to charge VAT on the transaction.

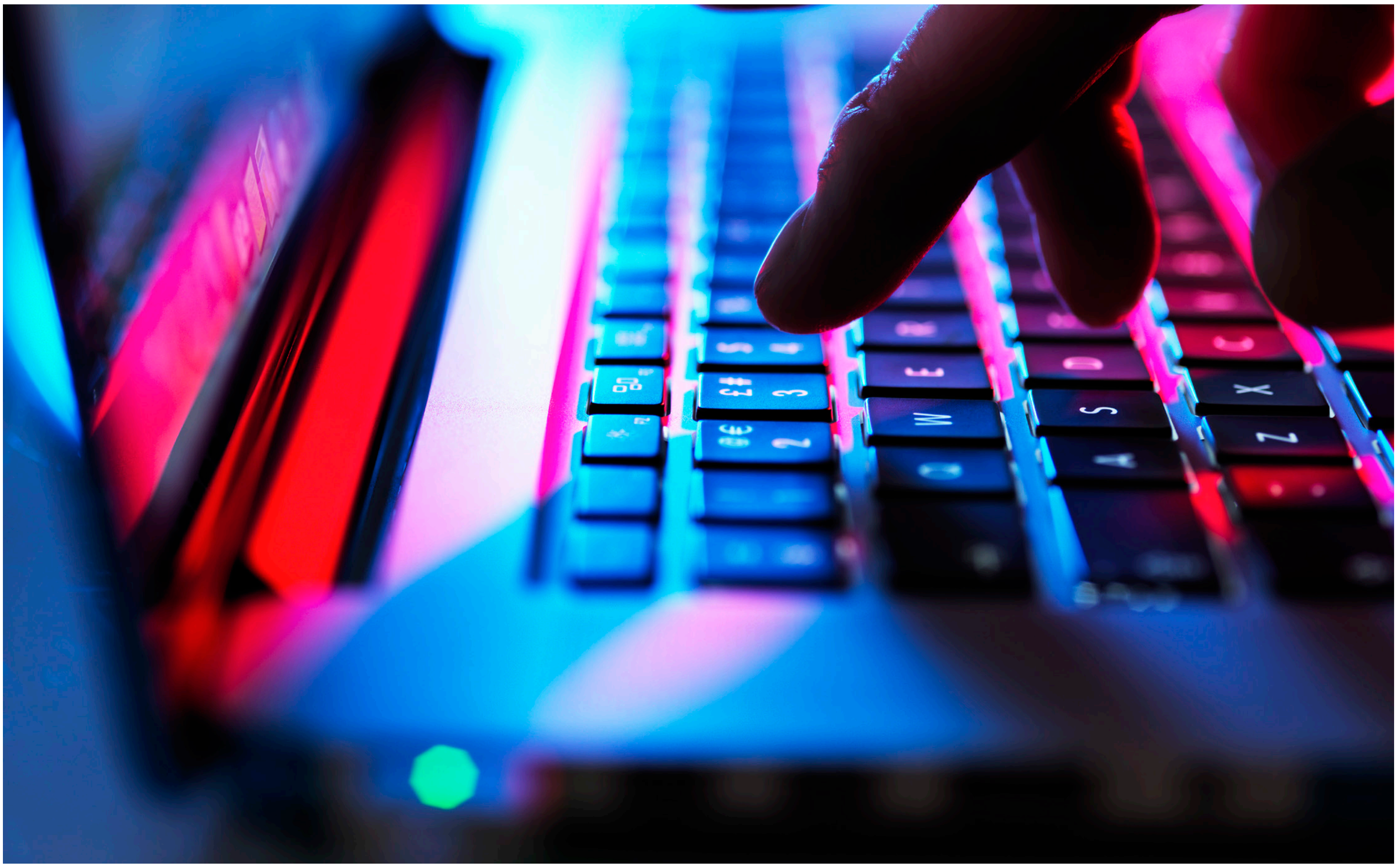
In this Alert, we provide an analysis of the changes proposed by the Bills including the changes highlighted above.

Income Tax Act CAP. 470 (ITA) – Corporate Income Tax

Issue	The current tax provision	Proposed change	Impact
Section 2 **Amendment of the definition of "royalty"**	Royalty" is defined to mean a payment made as a consideration for the use of or the right to use – - the copyright of a literary, artistic or scientific work; or - a cinematograph film, including film or tape for radio or television broadcasting; or - a patent, trademark, design or model, plan, formula or process; or - any industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific equipment or experience, and gains derived from the sale or exchange of any right or property giving rise to that royalty	The Bill proposes to amend the definition of a "royalty" by expanding the same to include a payment made as a consideration for the use or the right to use - - any software, proprietary or off-the-shelf, whether in the form of license, development, training, maintenance or support fees;	This amendment seems to be a response to the judgment of the High Court in **Seven Seas Technologies Limited v Commissioner for Domestic Taxes (Income Tax Appeal 8 of 2017) [2021] KEHC 358 KLR** where the High Court distinguished between the right to use copyright in a software vis-a-vis the right to use a copyrighted software. It is still unclear whether this amendment achieves its objective of imposing tax on payments relating to software as the High Courts contention was around the interpretation of the phrase 'use or right to use' rather than the fact the explicit inclusion of payments for software in the particular section. The amendment only serves to explicitly include software but does not address the issues raised in respect of 'right to use'.
Section 2 **Introduction of definition of the term "Donation"**	N/A	"donation" has been defined by the Bill to mean a benefit in money in any form, promissory note or a benefit in kind conferred on a person without any consideration and includes grants;	The proposed definition follows the release of the Income Tax (Donations and Charitable Organisations Exemption) Rules, 2023 which provides guidelines for the allowability of donations under section 15(2)(w).
Section 2 **Introduction of definition of the term "Public entity"**	N/A	"public entity" means a ministry, state department, state corporation, county department or agency of the national or county Government;	The proposed definition of what constitutes a public entity is informed by the proposed introduction of withholding tax on the supply of goods made by a public entity at a rate of 0.5% and 5% for residents and non-residents respectively.

Issue	The current tax provision	Proposed change	Impact
Amendment of Section 10, amendment of Section 35, and amendment of the Third Schedule to introduce Withholding tax on • Resident or non-resident person(s) owning or operating a digital marketplace or platform, who makes or facilitates a payment in respect of digital content monetization, goods, property or services	N/A	The Bill proposes that where a resident or a non-resident person, being the owner or operator of a digital marketplace or platform, makes or facilitates payment in respect of digital content monetisation, goods, property or services, the amount thereof shall be deemed to be income which accrued in or was derived from Kenya and subject to withholding tax at a rate of 5% and 20% for residents and non-residents respectively. The Bill also defines "platform" to mean 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.	A plain reading of the amendment to Section 10 suggests that the drafters of the Bill intended to deem the full payment in connection with any activity relating to digital content monetisation, purchase of goods, property or services over a digital marketplace or platform to be accrued in or derived in Kenya. Section 35 however appears to only impose withholding tax to the portion of the payment made to the owner or operator of the digital marketplace or platform for making or facilitating payments on a digital marketplace not the whole payment. We note from public statements issued by the Government representatives that the tax is aimed at operators of digital marketplace operators and platforms which aligns with the wording adopted at Section 35 rather than the wording adopted in Section 10. The consequence of the above proposed amendments may lead to unintended results such as rendering digital services tax ("DST")/ significant economic presence redundant since payments will be subject to withholding tax at the rate of 20%. This is further explained below. Previously, the digital marketplace operators (especially non-resident operators/owners) were subject to 1.5% digital services tax ("DST") only and not subject to withholding tax. However, following these provisions, instead of the 1.5% DST, withholding tax will be applicable at the rate of 5% and 20% on payments to resident operators and non-resident operators of digital marketplaces respectively in relation to facilitation of payments on a digital marketplace. This will result in increased costs of operating digital marketplaces in Kenya, as the operators may pass on these costs to the vendors and end consumers. Another critical oversight by the drafters of the Bill is that they have not limited the application of the proposed Section 10 to only capture transactions originating from or terminating in Kenya. Thus, it can be construed the proposed amendment also captures transactions that do not originate from or terminate in Kenya. The Bill does not also take into account the different models of e-commerce hence interpreting it in respect of the various e-commerce models presents difficulties including payment service providers.

Income Tax Act CAP. 470 (ITA) – Corporate Income Tax



Issue	The current tax provision	Proposed change	Impact
Section 12E **Repealing and replacing section 12E on Digital Service Tax ("DST") and Paragraph 12 of the Third Schedule to introduce significant economic presence tax**	Section 12(E) provides that: Notwithstanding any other provision of this Act, a tax to be known as digital service tax shall be payable by a non-resident person whose income from the provision of services is derived from or accrues in Kenya through a business carried out over the internet or an electronic network including through a digital marketplace	Notwithstanding any other provision of this Act, a tax known as significant economic presence tax shall be payable by a non-resident person whose income from the provision of services is derived from or accrues in Kenya through a business carried out over a digital marketplace. The Bill further proposes that the taxable profit of a person liable to pay the tax shall be deemed to be ten per cent of the gross turnover. Paragraph 12 of the Third Schedule will also be amended to provide that the rate of tax in respect of significant economic presence tax charged under section 12E shall be 30% of the deemed taxable profit.	The Government appears to have rebadged the Digital Service Tax (DST) to significant economic presence tax and increased the tax rate from 1.5% to 3%. While the significant economic presence test was conceptualised to provide a threshold of users before such digital platforms would be subject to tax in the country of the user, no such threshold has been provided in this Bill. Accordingly, no significant presence arising from the number of users appears to be anticipated by the provisions in the Bill and as such the significant economic presence tax appears to be very similar to the Digital Services Tax. Further, the deemed taxable profit of 10% of the gross turnover does not appear to reflect the financial realities of businesses in the digital sector given that most of these platforms are in the investment stage of growth. However, SEP appears to have been rendered redundant by the introduction of WHT on payments for facilitation of payments over a digital marketplace.

Issue	The current tax provision	Proposed change	Impact
Introduction of Section 12G to introduce a minimum top-up tax	N/A	The proposed Section 12 (G) provides that: (1) Notwithstanding any other provision of this Act, a tax known as minimum top-up tax shall be payable by a covered person where the combined effective tax rate in respect of that person for a year of income is less than fifteen per cent. (2) The combined effective tax rate for a covered person shall be the sum of all the adjusted covered taxes, divided by the sum of all net income or loss for the year of income, multiplied by a hundred. (3) The amount of tax payable shall be the difference between fifteen per cent of the net income or loss for the year of income of a covered person, and the combined effective tax rate for the year of income, multiplied by the excess profit of the covered persons. (4) **This section shall not apply –** (a) To a public entity that is not engaged in business; (b) To a person whose income is exempt from tax under paragraph 10 of the First Schedule; (c) To a pension fund and the assets of that pension fund; (d) To a real estate investment vehicle that is an ultimate parent entity; (e) To a non-operating investment holding company; (f) To an investment fund that is an ultimate parent entity; (g) To a sovereign wealth fund; or (h) To an intergovernmental or supranational organization including a wholly owned agency or organ of the intergovernmental or supranational organization.	The Bill proposes to introduce a domestic minimum top up tax which would allow Kenya to impose an additional amount of tax on the excess profits of entities that are part of an in-scope multinational group in order to bring the effective tax rate on those profits up to the 15% minimum rate. The proposed domestic minimum top up tax is part of the Organization for Economic Co-operation and Development's (OECD) Pillar Two framework which seeks to ensure an effective tax rate of at least 15% in every jurisdiction where an in-scope multinational groups operates. This is seen as a move by Kenya to align the country tax landscape to the international tax developments led by the OECD under the two-pillar solution. In Kenya, the minimum top up tax will be most relevant to subsidiaries of multinationals that are subject to the lower rate of taxation available under the SEZ and EPZ tax framework and companies that qualify for the 150% accelerated capital allowances deduction.
Section 34 **Repealing Section 34 and replacing with a new section**	Section 34 sets out rates at which various incomes specified in the Act are taxable.	The Bill proposes to delete Section 34 and replace it with the following provisions: (1) The tax chargeable on any income specified in this Act shall be at the rate specified in the Third Schedule. (2) Subject to subsection (1), the transfer of interest in a person shall be charged in accordance with the Ninth Schedule. (3) In this section "person" does not include a partnership.	This amendment seeks to harmonize the provisions of Section 34 with the Third Schedule (and Ninth Schedule) which sets out the specific rates of tax chargeable to various income(s) specified in the Act.

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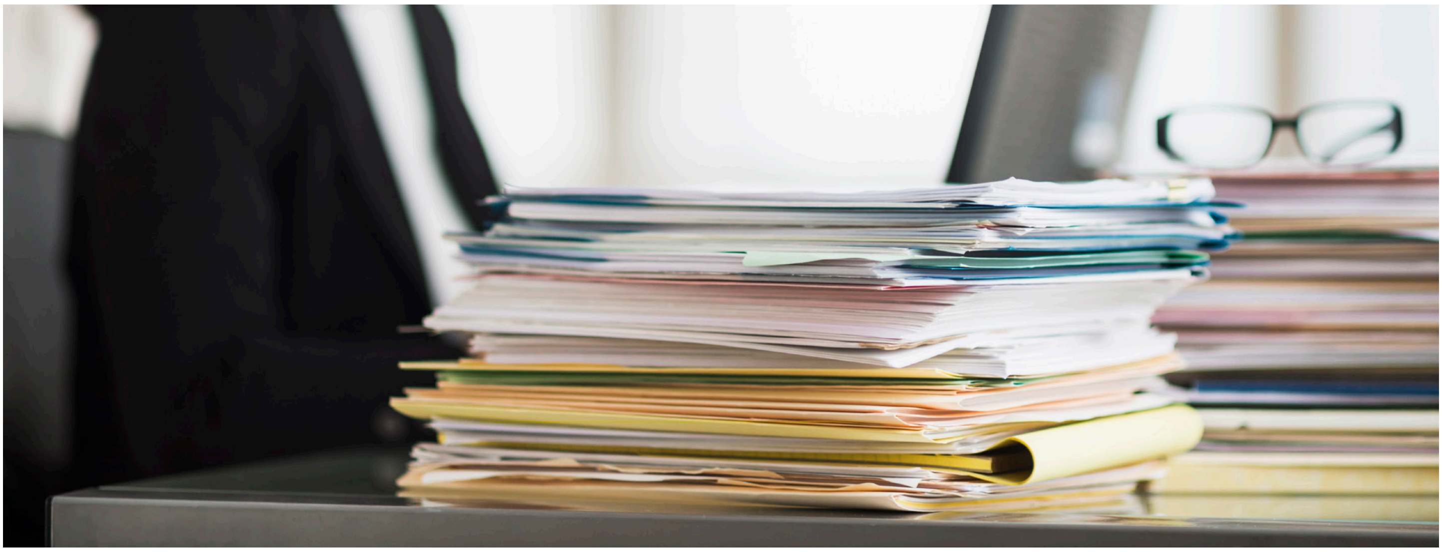
Issue	The current tax provision	Proposed change	Impact
Amendment of Section 35, and amendment of the Third Schedule to introduce withholding tax on payments to both residents and non-residents in respect of: **- supply of goods to a public entity;**	N/A	The Bill has proposed withholding tax on payments to non-residents and residents in respect of supply of goods to a public entity at the rate of 5% and 0.5% respectively.	We note that whilst an amendment has been effected to Section 35, no changes have been proposed to Section 10 in relation of income from supply of goods to a public entity being deemed accrued or derived from Kenya. Further, whilst the term "supply" is typically a value added tax term, no definition has been proposed in the ITA in relation to what constitutes a supply for income tax purposes. It is not clear how this proposal aligns with the existing double tax agreements that Kenya has in place. It is also likely to impact the rate of return for suppliers contracted by various public bodies to deliver on EPC contracts. This proposal is also likely to increase the government's expenditure where non-resident suppliers gross up their invoices to take into account the withholding tax cost.
Amendment of the First schedule to waive tax exemptions on certain income.	The below incomes are exempt from tax in the current ITA: - The income or principal sum of a registered family trust. - Any capital gains relating to the transfer of title of immovable property to a family trust.	The Bill proposes to delete the following exemptions in the First Schedule to the ITA: - The income or principal sum of a registered family trust. - Any capital gains relating to the transfer of title of immovable property to a family trust. In addition, the Bill proposes to subject to tax infrastructure and green bonds to be issued after the enactment of the Tax Law (Amendment) 2024. The Bill also proposes to exempt non-resident contractors, sub-contractors, consultants or employees involved in the implementation of a project financed through a 100% grant from income tax.	Income from infrastructure and green bonds issued after the enactment of the Tax Law (Amendment) 2024 will be subject to 5% withholding tax for both resident and non-resident persons. However, for corporate investors the infrastructure and green bonds will be taxed at the corporate tax rate of 30% as the proposed amendment does not indicate if the WHT is final or not. The application of withholding tax to infrastructure bonds (as well as the green bonds) will result in an increase in the interest rate yield paid by the Government in respect of the infrastructure and green bonds as investors consider the net return when making investment decisions.
Reduced Capital Gains Tax ("CGT") rates for transactions certified by Nairobi International Financial Centre Authority under the Third Schedule	N/A	The Bill proposes that whilst the rate of CGT charged under Section 3(2)(f) is 15%, where the Nairobi International Financial Centre Authority certifies that: - a firm has invested at least three billion shillings in at least one entity incorporated or registered in Kenya within a period of two years; and - the transfer of the investment is to be made after five years of the date of the investment the applicable CGT rate would 5% not 15%.	The reduced CGT will promote the growth of the Nairobi International Financial Centre.

Income Tax Act CAP. 470 (ITA) – Employment Taxes

Issue	The current tax provision	Proposed change	Impact
Amendment of the definitions of: **a) registered individual retirement fund** **b) registered pension fund** **c) registered provident fund**	Section 2 of the ITA defines: i) A registered individual retirement fund as "an individual retirement where the trust deed for such a fund has been registered with the Commissioner." ii) A registered pension fund as "one which has been registered with the Commissioner in such manner as may be prescribed." iii) A registered provident fund as "one which has been registered with the Commissioner in such manner as may be prescribed."	The Bill proposes to amend Section 2 of the ITA to define: i) a registered individual retirement fund as "an individual retirement fund where the trust deed for such a fund has been registered with the Retirement Benefits Authority;" ii) a registered pension fund as "a pension fund which has been registered with the Retirement Benefits Authority;" and iii) a registered provident fund as "a provident fund which has been registered with the Retirement Benefits Authority;"	The proposed amendments will relieve individual retirement, pension or provident funds registered with the Retirement Benefits Authority ("RBA") of the requirement to register with the KRA. The proposed amendments are a welcome move towards improving tax administration by leveraging on information sharing between the revenue authority and other government agencies including the RBA.
Amendment of tax-free threshold for non-cash benefits not expressly provided for in the ITA	Pursuant to Section 5(2)(b) of the ITA, any non-cash benefit whose taxable value is not specifically prescribed under ITA is exempt from tax where the aggregate value (per annum) is less than KES 36,000.	The Bill proposes to amend Section 5(2)(b) of the ITA to increase the tax-exempt threshold for such benefits to KES 60,000 per annum.	This is a welcome move since the tax-exempt threshold for these benefits has remained unchanged since June 2005, which has not kept pace with the rising inflation.
Amendment of the tax-free threshold for meal benefits	Section 5(4)(f) of the ITA provides for the exemption from tax of meal benefits whose value is less than KES 48,000 per year per employee.	The Bill seeks to amend Section 5(4)(f) of the ITA to exempt from tax the first KES 60,000 of the value of meals provided to an employee annually.	The proposed change will be a step towards aligning the tax-free threshold for meals to reflect the prevailing cost of living.
Increase of the tax-free threshold for gratuity paid into a registered pension scheme	Section 5(4)(g) of the ITA provides for the exemption from tax of gratuity or similar payment made in respect of employment services rendered which is paid into a registered pension scheme where such amount does not exceed KES 240,000 for each year of service, provided that this exemption is not granted to a person who is already eligible for pension contribution deductions under section 22A of the ITA.	The Bill proposes to amend Section 5(4)(g) of the ITA to increase the tax-free threshold for gratuity or similar payments received in respect of employment or services rendered and paid into a registered pension to KES 360,000 for each year of service, provided that the person was not eligible for pension contribution deductions during the period when such payment was accrued.	The proposed amendment is in line with the guidelines laid out in the National Tax Policy which prescribe revision of all financial limits every five years for inflationary adjustment. The proposed change will also align the tax-free threshold for such payments to the proposed maximum threshold for deductible pension contributions to individual retirement, pension or provident funds. Additionally, employees will be encouraged to make additional pension contributions. This proposal will boost the mobilisation of retirement savings.
Introduction of a tax relief on contributions to the Social Health Insurance Fund ("SHIF")	Premiums paid towards health insurance policies or contributions to the National Health Insurance Fund ("NHIF") qualify for the insurance relief available to resident individuals. The monthly insurance relief is capped at 15% of the premiums paid in relation to qualifying education, life or health policies, subject to a limit of KES 60,000 per annum	The Bill proposes to amend Section 15(2) of the ITA to provide for the deductibility of contributions made SHIF in determination of taxable income of an individual. The Bill also proposes to delete Section 31(1)(iv) of the ITA to which provides for insurance relief on contributions to the NHIF.	The enhanced relief for contributions towards SHIF is a welcome move as it will alleviate the impact of the contributions to SHIF on the net take home pay of employees.

Income Tax Act CAP. 470 (ITA) – Employment Taxes

Issue	The current tax provision	Proposed change	Impact
Amendments in relation to the tax relief on employee Affordable Housing Levy ("AHL") contributions	All resident individuals are entitled to an affordable housing relief equivalent to 15% of the contributions made under the Affordable Housing Act subject to a maximum of KES 108,000 per annum (or KES 9,000 per month).	The Bill proposes to delete Paragraph 3 of Part 1 of Head A of the First Schedule to the ITA, effectively removing the affordable housing relief available to resident individuals. However, the Bill also proposes the amendment of Section 15(2) of the ITA to provide for the deduction of contributions made under the Affordable Housing Act, 2024 in determination of the taxable income of an employee.	Individuals will enjoy an uncapped tax relief on their AHL contributions at their marginal tax rate. This relief will be higher than the current affordable housing relief which is at the rate of 15% of contributions and is capped.
Amendments in relation to the tax relief on contributions a to post-retirement medical fund ("PRMF")	Under Paragraph 4 of Part 1 of Head A of the First Schedule to the ITA, all resident individuals are entitled to a tax relief of 15% of the contributions made to a PRMF subject to a maximum of KES 15,000 per month.	The Bill proposes to delete Paragraph 4 of Part 1 of Head A of the First Schedule to the ITA which prescribes the amount of PRMF relief available to resident individuals and introduce an amendment to Section 15(2) of the ITA to provide for the deductibility of contributions made to a PRMF in the determination of taxable income.	This proposal is meant to increase the disposable incomes of individuals and encourage them to save towards PRMFs.
Increase of the maximum deductible contributions to a registered pension fund, registered provident fund or individual retirement fund.	Employee contributions to a registered pension fund, registered provident fund or individual retirement, are deductible in the determination of taxable income subject to a maximum of KES 240,000 per annum (or KES 20,000 per month). Additionally, employer contributions to a registered pension fund, registered provident fund or individual retirement fund on behalf of an employee are deductible for corporate income tax purposes to the extent that the above deductible limit has not been exhausted by the employee	The Bill proposes to amend Section 22A(1)(c) and Section 22B(2)(c) of the ITA to increase the maximum deductible employee contributions to a registered pension fund, registered provident fund or individual retirement fund to KES 360,000 per annum (or KES 30,000 per month). The Bill also proposes to amend Section 22(A)(2)(c) and Section 22A(3)(c) of the ITA to increase the maximum deductible sum of employer and employee contributions to registered funds to KES 360,000 per annum (or KES 30,000 per month).	The proposed amendment is expected to encourage individuals to save towards their retirement. The proposed change could also incentivize employers to increase their contributions to a registered fund in a bid to attract talent.



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Amendment of provisions relating to pension withdrawals	Subject to Paragraph 53 of the First Schedule to the ITA, monthly pension payments to a person who is 65 years, or more are not subject to tax. Paragraph 5(d)(i) of the Third Schedule to the ITA provides that pension payments from a registered pension fund, registered provident fund or registered individual retirement fund to a person who has attained the age of 50 years or has retired early on account of ill health or has been a member of the Fund for 15 years or more are taxable at the preferential (wide) tax bands specified in this paragraph. Furthermore, according to Paragraph 5(d)(ii) of the Third Schedule to the Income Tax Act (ITA), pensions withdrawn before the expiration of 15 years from the date of joining the fund are subject	The Bill proposes to amend paragraph 53 of the First Schedule to the ITA and delete paragraph 5(d)(i) of the Third Schedule to the ITA to provide for the exemption from tax on pension withdrawals or payments from registered funds to individuals who: a) have attained the retirement age specified in the rules of the fund; or b) retire prior to attaining the retirement age due to ill health; or c) withdraw from the fund 20 years after the registration date as a member. The Bill also proposes to amend Paragraph 5(d) of the Third Schedule to the Income Tax Act (ITA) to provide that pensions withdrawn before the expiration of 20 years from the date of joining the fund shall be subject to taxation at the specified (narrow) withholding tax rates.	These changes are in line with the medium term revenue strategy (MTRS) which provides for tax exemption of pension withdrawals. These changes are also expected to encourage individuals to save over a longer period for their retirement.
Amendment of provisions relating to income earned by an individual from implementation of a project financed by a grant under an agreement between the Government of Kenya and a development partner	Paragraph 71 of the First Schedule to the ITA provides for the exemption from tax of:- *"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."*	The Bill proposes to amend Paragraph 71 of the Third Schedule to the ITA to provide for the exemption of:- *"income earned by a non-resident contractor, sub-contractor, consultant or employee involved in the implementation of a project financed through a 100% grant under an agreement between the Government of Kenya and a development partner, to the extent provided for in the Agreement* *Provided that: -* - *the non-resident contractor, sub-contractor, consultant or employee shall maintain this status for the tenure of this agreement* - *Any other income not directly related to the project earned by that the non-resident contractor, sub-contractor, consultant or employee shall be subject to tax."*	The proposed amendment will ensure that income derived by a non-resident individual from working on a project financed through a 100% grant shall be exempt from tax. However, any income earned outside the project will be taxable.

Income Tax Act CAP. 470 (ITA) – Employment Taxes

Issue	Current tax provision	Proposed change	Impact
Section 23 A **Amendments to include the contents of an electronic Tax Invoice**	N/A	Section 23 A is amended by – a) inserting the following new subsection immediately after subsection (2) – 2A) An electronic tax invoice issued under subsection (2) shall contain the following information– (a) the words "TAX INVOICE"; (b) the name, address and PIN of the supplier; (c) the name, address and PIN if any, of the purchaser; (d) the serial number of the tax invoice; (e) the date and time which the tax 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; (f) the description of the supply including quantity of the goods or type of services; (g) the details of any discount allowed at the time of supply; (h) the consideration for the supply; (i) the tax rate charged and total amount of tax charged; and (j) any other prescribed information.	This section clarifies the contents of an ETIMs invoice.
Section 23 A **Reverse invoicing for small business and small-scale farmers**	N/A	a) Inserting the following new subsection immediately after subsection 3 – (3A) Without prejudice to subsection (3), where a supply is received from a small business or a small-scale farmer, whose turnover does not exceed one million the purchaser shall issue a tax invoice for the purpose of ascertain tax liability.	This provision will allow purchasers to issue eTIMS complaint invoices on behalf of the small businesses they are buying from and being able to support their deductible expenses. This proposal will reduce the administrative burden of small businesses and farmers. It is also expected that the proposal may inadvertently discourage some businesses that may not want additional compliance requirements to work with small businesses. It is unclear whether the turnover thresholds are monthly or are on an annual basis. Finally, it is noted that no consideration has been given to small businesses that deal with other business as such businesses may be challenged on raising eTIMS compliant invoices or carrying out reverse invoicing.

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Section 37 E **Extension of the tax amnesty**	(1) Notwithstanding any other provision of this Act, 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. (2) Where all the principal tax due had not been paid before 31st December 2022, a person shall apply to the Commissioner for the amnesty of interest or penalties on the unpaid tax and propose a payment plan for the outstanding amount. (3) For the purposes of subsection (2)- (a) the amnesty shall be on the interest or penalties on the unpaid tax that have accrued up to the 31st December, 2022. (b) the amnesty shall only be granted once if the person - (i) applies for amnesty and pays all the outstanding principal taxes not later than the 30th June 2024; (ii) does not incur a further tax debt; and (iii) signs a commitment letter for the settlement of all the outstanding taxes that the person may owe. (4) Despite subsection (2), any amount of principal tax as at 31st December, 2022 that remains unpaid on the 30th June, 2024, shall attract interest and penalties for which no amnesty shall be granted under this section. (5) Despite subsection (1) the Commissioner shall not remit, in whole or in part, any penalty or interest payable by a person, imposed under section 85.	The Bill proposes to delete section 37E of the TPA and substitute it with a new section 37 E which reads as follows; 37E (1) Notwithstanding any other provision of this Act, the Commissioner shall refrain from recovering penalties or interest or fines on tax debt where a person shall have paid all the principal tax due before the 31st December 2022. (2) Where all the principal tax due shall have not been paid before the 31st December 2022, the person from whom the tax is due shall apply to the Commissioner for an amnesty of interest, penalties or fines on the unpaid tax, and purpose a payment plan for the outstanding amount. (3) For the purposes of subsection (2) – a) the amnesty shall be on interest, penalties or fines on the unpaid tax that have accrued up to the 31st December, 2022; b) the amnesty shall only be granted once if the person – i) applies for amnesty and pays all the outstanding principal taxes not later than 30th June 2025; ii) does not incur a further tax debt; and iii) gives a written undertaking for the settlement of all outstanding taxes that the person may owe. (4) Despite subsection (2) where a person has paid part of the principal tax due as on the 31st December, 2022, and has been granted amnesty on the unpaid principal tax, and interest, penalties and fines thereon, any amount that remains unpaid on the 30th June 2025, shall attract interest and penalties for which no amnesty shall be granted.	This provision will extend the tax amnesty which expired on 30th June 2024. Specifically, whilst the tax amnesty still applies on the interest and penalties accrued up to the 31st of December 2022, the duration within which the outstanding principal taxes were to be paid for the amnesty to apply, has been extended from 30th June 2024 to 30th June 2025. However, this extension only relates to principal taxes due but not been paid before 31st December 2022. It is highly likely that additional taxpayers will take advantage of the extension to resolve outstanding tax balances and disputes.

Income Tax Act CAP. 470 (ITA) – Employment Taxes

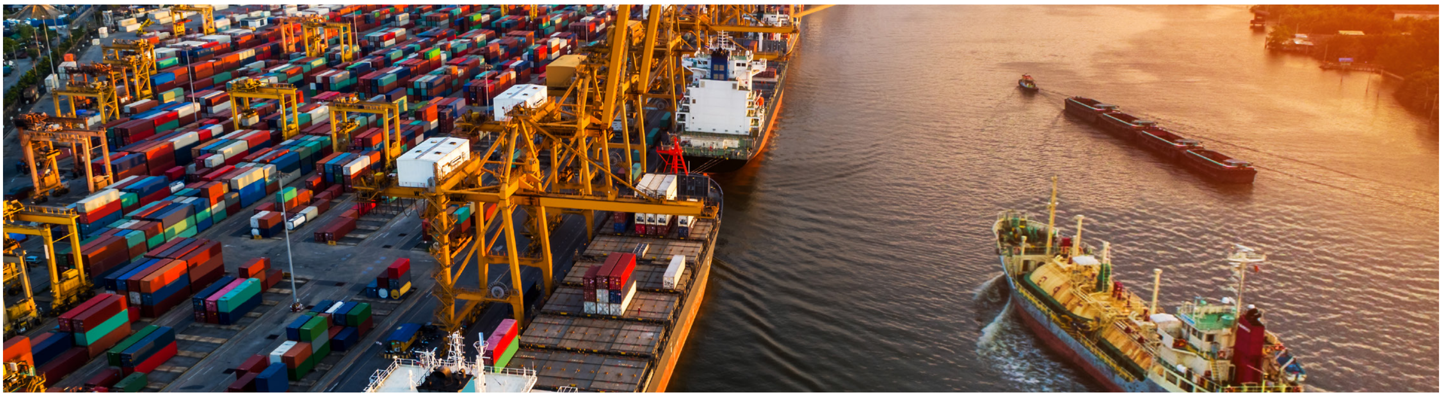
Issue	Current tax provision	Proposed change	Impact
Section 37 F **Amendment to restore the power of the Commissioner to abandon taxes**	N/A	The Bill proposes to restore the Commissioner's authority to abandon the collection of unpaid taxes under specific conditions, such as when recovery is impossible or would cause undue difficulty, expense, hardship, or inequity. This authority can only be exercised with the prior written approval of the Cabinet Secretary. The Commissioner must publish a notice in the Gazette every four months, listing the taxpayers and the reasons for abandoning the taxes. This notice must also be presented to the National Assembly, which can approve or annul it within twenty-one sitting days.	The power to abandon taxes was repealed by the Finance Act 2023. The Bill now proposes to reintroduce this provision. This is a welcome move as it will benefit both the Commissioner and taxpayers in situations where recovering taxes is difficult. By allowing the Commissioner to abandon the collection of certain taxes, the law introduces flexibility in handling cases where tax recovery is impractical or excessively burdensome. This can help streamline the tax administration process and provide relief for taxpayers facing genuine hardship or inequity in tax recovery. To ensure further oversight, the Bill proposes that the Commissioner must publish a notice in the Gazette every four months, listing the taxpayers and the reasons for abandoning the taxes. This notice must also be presented to the National Assembly, which can approve or annul it within twenty-one sitting days. Previously, only the Cabinet Secretary had oversight over the details and amounts of taxes abandoned under the specified section.
Section 47 **Amendment of the provisions for refund of overpaid tax to only allow applications within 6 months**	(1) Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner, in the prescribed form - (a) to offset the overpaid tax against the taxpayer's outstanding tax debts and future tax liabilities; or (b) for a refund of the overpaid tax within five years, or six months in the case of value added tax, after the date on which the tax was overpaid	The Bill proposes to amend the section by; a) Deleting Section proviso in subsection 1- b) Deleting subsection 42 A (4C) and substituting with the following subsection- (4C) A person who is required under this section to withhold tax, and without reasonable cause – (a) fails to withhold the whole amount of the tax which should have been withheld; or (b) fails to remit the amount of the withheld tax to the Commissioner by the fifth working day after the deduction was made, shall be liable to a penalty of ten per cent of the amount not withheld or remitted. The Bill proposes to delete Section 47(1) and substitute it with the following subsection – (1) Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner in the prescribed form – (a) to offset the overpaid tax against the taxpayer's outstanding tax debts and future tax liabilities including instalment taxes and input value added tax; or (b) for a refund of the overpaid tax- (i) in the case of income tax, within five years from the date on which the tax was overpaid; or (ii) in the case of any other tax, within six months from the date the tax was overpaid.	The proposed change to Section 42A involves two main amendments: first, the deletion of the proviso in subsection 1, which previously exempted zero-rated supplies and certain manufacturers from withholding tax; second, the replacement of subsection 42A(4C) with a new provision that imposes a 10% penalty on individuals who, without reasonable cause, fail to withhold or remit the required tax by the fifth working day after the deduction. The amendment introduces stricter deadlines for remitting withheld taxes, requiring payment by the fifth working day after the deduction, instead of the twentieth day of the following month. This change imposes an additional compliance burden on taxpayers. Withholding VAT was introduced in Kenya on 1st October 2003. It was not a new tax but a reinforcement measure to ensure that all VAT charged reaches the government. Prior to this, some suppliers were tempted to suppress the declaration of VAT due for payment.

Issue	Current tax provision	Proposed change	Impact
Section 59 A **Amendment of the provisions for data management and reporting to allow taxpayers to have all transactional information on the electronic tax system.**	N/A	The proposed amendment to Section 59A empowers the Commissioner to require businesses with a turnover exceeding five million shillings to integrate their electronic tax systems for submitting detailed transactional data. This requirement can be enforced for up to one year, depending on the business's nature. Failure to comply with this integration notice or other specified notices can result in a penalty of up to two million shillings per month for each month the non-compliance continues.	The proposal allows the Commissioner to mandate businesses with a turnover exceeding five million shillings to integrate their electronic tax systems for submitting detailed transactional data. This requirement can be enforced for up to one year, depending on the nature of the business. Non-compliance with this integration notice or other specified notices can result in a penalty of up to two million shillings per month for each month the non-compliance continues. The proposal increases compliance requirements for businesses with a turnover exceeding five million shillings, as they will need to integrate their electronic tax systems to submit detailed transactional data. This will necessitate investment in technology and potentially new processes to ensure compliance. The proposal appears to run contrary to constitutional protections of taxpayers and international norms on data privacy.
Section 77 **Amendment of the due dates for submission and any payments to KRA to exclude weekends and public holidays in the computation of time**	77. Due date for submission and payment. If the date for - (a) submitting or lodging a tax return, application, notice, or other document; (b) the payment of a tax; or (c) taking any other action under a tax law, falls on a Saturday, Sunday, or public holiday in Kenya, the due date shall be the previous working day: Provided that where a person who submits a notice of objection in electronic form or a tax return in electronic form, or pays the tax electronically, the due date shall remain the date specified in the relevant tax law.	The Bill proposes to amend Section 77 by; (a) By renumbering the current provision as subsection (1) – (b) By adding the following new subsection immediately after subsection (1) – (2) In computing the period for the lodgement of an objection decision to the Commissioner under section 51, an appeal to Tax Appeals Tribunal under section 52, an appeal to the High Court under Section 53 or an appeal to the Court of Appeal under Section 54, the computation shall not include Saturdays, Sundays or public holidays	This excludes weekends and public holidays from the computation of time. The proposal allows more time for taxpayers to lodge documents and file returns and harmonizes with other court filing rules as well as The Interpretation and General Provisions Act Cap 2 of the laws of Kenya.

Income Tax Act CAP. 470 (ITA) – Employment Taxes

Issue	Current tax provision	Proposed change	Impact
Section 83 **Amendment of the provision on late submission penalty to include penalties for export processing zones**	83. Late submission penalty. (1) A person who submits a tax return after the due date shall be liable to a penalty - (a) of twenty five percent of the tax due or ten thousand shillings whichever is higher, if it is in relation to a return required to be submitted on account of employment income; (b) five thousand shillings one thousand shillings if it is in relation to a return required to be submitted under Turnover Tax; or (c) five per cent of the amount of tax payable under the return or ten thousand shillings, whichever is the higher, if it is in relation to value added tax or excise duty; (d) in any other case - (i) five per cent of the amount of tax payable under the return or twenty thousand shillings, whichever is the higher, in respect of a person other than an individual; or (ii) five per cent of the amount of tax payable under the return or two thousand shillings, whichever is the higher, for an individual whichever is the higher. Provided that in the calculation of the late submission penalty for purposes of this section, the amount of tax payable or due under the return shall be reduced by the amounts already paid and withholding tax credits.	The Bill proposes to amend section 83 by; (a) deleting the marginal note and substituting it with the following new marginal note – “Penalties for late submission and failure to submit returns”. (b) The Bill also proposes to insert the following new section immediately after Section 83 (1) – (c) (1A) An export processing zone enterprise that fails to submit a return as required under paragraph 4 of the Eleventh Schedule to the Income Tax Act shall be liable for a penalty of twenty thousand shillings per month for each month or part thereof that the failure continues.	The penalty was already present in the eleventh schedule of the ITA which provides that in the event of failure to submit a return or late submission of a return, the enterprise will be liable to a penalty of two thousand shillings per day for as long as the failure continues. The proposal is therefore aimed at consolidating the penalties under the ITA with the TPA.
First Schedule Amendment of the provision on transactions for which a PIN is required to include registration of an employee working remotely outside Kenya for an employer in Kenya.	N/A	The Bill proposes to amend the First Schedule of the Act by inserting the following new subsection; (16) Registration of an employee working remotely outside Kenya for an employer in Kenya.	The provision requires employers to ensure that remote employees are properly registered for tax obligations in Kenya.

Value Added Tax Act, CAP. 476 (VAT Act)



Issue	Current tax provision	Proposed change	Impact
Section 12 **Time of supply for exported goods**	N/A	The Bill proposes to amend Section 12 by introducing a new subsection 5 reading as follows: *"The time of supply for exported goods shall be the time when the certificate of export or such other equivalent export document has been issued by Customs"*	The proposed amendment aims at bringing more clarity on the time of supply for exported goods.
Section 17 **Repeal of the input tax apportionment formula**	Subsection 7 provides that "if the fraction of the formula in subsection (6) for a tax period - *(a) is more than 0.90, the registered person shall be allowed an input tax credit for all of the input tax comprising component **A** of the formula; or* *(b) is less than 0.10, the registered person shall not be allowed any input tax credit for the input tax comprising component **A** of the formula.*	The Bill proposes to delete subsection 7.	The proposal is intended to ensure input VAT is claimed only to the extent that it is incurred to generate taxable supplies. Whilst suppliers with more than 90% taxable supplies will no longer be able to enjoy full input tax deduction, those with less than 10% taxable supplies are now eligible for partial input tax claim. Anticipated increase in revenue by the Government with removal of such input tax claim restrictions.
Section 17 **Restriction to claim input tax with respect to taxable supplies made to an official aid funded project**	Subsection 8 of provides states that *"Notwithstanding the provisions of this section, 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"*	The Bill proposes to delete subsection 8.	Generally, the supply of taxable goods and services to an official aid funded project is exempted from VAT upon approval by the Cabinet Secretary responsible for the National Treasury. The proposal hence seeks to maintain the general rule that deduction of input VAT is only allowable to the extent that a supply is used for making of taxable supplies.
Section 65 **Amendment of the provision relating to the application of East African Community Customs Management, Act 2004.**	Section 65 provides for the application of the East African Community Customs Management Act, 2004, and any related rules, with regards to imported taxable goods.	The Bill proposes to amend Section 65 by inserting the words **'and exported goods'** to provide for the application of the East African Community Customs Management Act, 2004 and any related rules, to exported goods.	The proposed change is a welcome move as it provides clarity on the application of the East African Community Customs Management Act, 2004 on both imported and exported goods. Imports and exports of goods go through customs controls.

Value Added Tax Act, CAP. 476 (VAT Act)

Issue	Current tax provision	Proposed change	Impact
Section A of Part I of the First Schedule to the VAT Act **Delisting of goods under the exempt supplies schedule**		The Bill proposes to delete the following items from the First Schedule: i) 8802.30.00 - Aeroplanes and other Aircraft of unladen weight exceeding 2,000 kgs but not exceeding 15,000 kg. ii) 8802.40.00 - Aeroplanes and other Aircraft, of unladen weight exceeding 15,000 kgs. iii) 8802.60.00 Spacecraft (including satellites) and suborbital and spacecraft launch vehicles. iv) Direction-finding compasses, instruments and appliances for aircraft. v) IP super soft fluff pulp - for-fluff 310 treated pulp 488*125mm (cellulose) of tariff number 4703.21.00 vi) Any other aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation. vii) 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, provided the vehicles meet the following conditions - (i) the vehicles shall at all times be registered and operated by a company that is licensed under the Tourism Vehicle Regime; (ii) the vehicles shall be used exclusively for the transportation of tourists; (iii) the vehicles shall have provisions for camping, rescue and first aid equipment, luggage compartments and communication fittings; and (iv) any other condition the Commissioner may impose: viii) Provided that tax shall become payable upon change of use or disposal of the vehicle for other use. ix) 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. x) 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 deletion of these items from the exemption schedule makes them subject to VAT at the standard rate of 16%. The proposal is aligned to the Government's proposal in the Medium-Term Revenue Strategy (MTRS) to re-evaluate the merits of the various exemptions and their general impact to the economy.

Issue	Current tax provision	Proposed change	Impact
Additional exempted goods introduced under Section A of Part I of the First Schedule to the VAT Act	N/A	The Bill proposes to exempt from VAT the following new items: 149. All imported inputs and raw materials supplied to manufacturers of agricultural pest control upon recommendation by the Cabinet Secretary for the time being responsible for agriculture. 150. Agricultural pest control products; 151. Fertilizers of Chapter 31; 152. Inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved from time to time by the Cabinet Secretary responsible for Agriculture.	The proposed changes have the effect of inflating the products' cost due to non-deductibility of input VAT. This is further heightened by the fact that some of the listed items are to be moved from the zero-rated schedule pointing to a policy shift preferring exemption to zero rating.
Removal of VAT exemption on helicopters and aircraft parts	Amendments to Paragraph 49, Section A of Part I of the First Schedule to the VAT Act which currently provides: *"All goods and parts thereof of chapter 88."*	The Bill proposes to delete Paragraph 49 and replace it with the following: *"All goods of Chapter 88 excluding helicopters"*	The proposal seeks to subject helicopters and parts of goods classified in Chapter 88 to VAT at the standard rate of 16%. However, we note that 'other parts of aeroplanes or helicopters' classified under tariff heading 8803.30.00 remain exempted under the First Schedule to the VAT Act.
Amendments to the exempted goods listed under Section A of Part I of the First Schedule to the VAT Act	Amendments to Paragraph 69, Section A of Part I of the First Schedule to the VAT Act which currently provides: *"Carrier tissue white, 1 ply 14.5 GSM of tariff number 4703.21.00"*	The Bill proposes to delete Paragraph 69 and replace it with the following: *"Goods of tariff number 4703.21.00 for use in the manufacture of baby diapers, sanitary towels (pads) and tampons."*	The proposed amendment broadens the VAT exemption to cover any item classified under tariff number 4703.21.00, provided they are used in the manufacture of baby diapers, sanitary towels, and tampons. This change aims to support the production of essential hygiene products by reducing the cost of raw materials, potentially leading to lower prices for the *common mwananchi.*
Part II of the First Schedule to the VAT Act **Items delisted from the exempted services list**		The Bill proposes to amend Part II of the First Schedule by delisting the following services: i) Betting, gaming and lotteries services. ii) Hiring, leasing and chartering of aircrafts excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00 iii) Air ticketing services supplied by travel agents iv) Entry fees into the national parks and national reserves. v) The services of tour operators, excluding in-house supplies.	The proposed amendments seek to impose VAT, 16%, on these services which is likely to increase the cost of these services to the final consumers. In addition, the changes will bring additional VAT compliance burden to services providers increasing the operation costs. The suppliers of the services will however be entitled to claim input VAT incurred in making such supplies.
Introduction of a new paragraph 35 under Part II of the First schedule	N/A	The Bill is proposing to insert a new paragraph immediately after Paragraph 34 *"35. Transfer of a business as a going concern."*	Exemption of "transfer of a business as a going concern" provides a relief to taxpayers pursuing business restructuring, as they will not be required to charge VAT on the transaction. However, the specific criteria defining what qualifies as a transfer of business remain unclear.

Value Added Tax Act, CAP. 476 (VAT Act)

Issue	Current tax provision	Proposed change	Impact
Amendments to Part A of the Second Schedule to the VAT Act	N/A	The Bill proposes to delist the following items relating to goods from the Second Schedule: i) 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. ii) Agricultural pest control products iii) Fertilizers of chapter 31 iv) Inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved from time to time by the Cabinet Secretary responsible for Agriculture.	The proposal will increase the cost of these supplies making them more expensive to an already overwhelmed citizenry. Some of these items delisted have been moved to the exemption schedule. The proposed amendments thus reflect a policy shift with preference of exemption over zero-rating. Further, noting that a number of the items delisted were introduced by Finance Act 2023, the volatility thus heightens tax uncertainty and difficulty in planning.

Excise Duty Act, CAP. 472 (EDA)

Issue	Current tax provision	Proposed change	Impact
Section 5 **Introduction of services offered in Kenya through a digital platform by a non-resident to the ambit of Excise Duty**	Section 5 of the EDA provides for the imposition of Excise Duty as follows; *"(1) Subject to this Act, a tax, to be known as excise duty, shall be charged in accordance with the provisions of this Act on –* *(a) excisable goods manufactured in Kenya by a licensed manufacturer;* *(b) excisable services supplied in Kenya by a licensed person; or* *(c) excisable goods imported into Kenya.* *(2) Excise duty shall be charged at the rate specified in the First Schedule for the excisable goods or services in force at the time the liability arises for excise duty as determined under section 6.* *(3) The excise duty payable -* *(a) under subsection (1)(a), shall be payable by the licensed manufacturer;* *(b) under subsection (1)(b), shall be payable by the licensed person making the supply; or* *(c) under subsection(1)(c), shall be payable by the importer of the excisable goods.*	The Bill seeks to amend section 5 of the EDA by introducing paragraph (d) immediately after paragraph (c) in subsection (1) and (3) as follows; *(1) Subject to this Act, a tax, to be known as excise duty, shall be charged in accordance with the provisions of this Act on -* *(a) excisable goods manufactured in Kenya by a licensed manufacturer;* *(b) excisable services supplied in Kenya by a licensed person; or* *(c) excisable goods imported into Kenya.* ***(d) excisable services offered in Kenya by a non-resident through a digital platform;*** (2) Excise duty shall be charged at the rate specified in the First Schedule for the excisable goods or services in force at the time the liability arises for excise duty as determined under section 6. (3) The excise duty payable - (a) under subsection (1)(a), shall be payable by the licensed manufacturer; (b) under subsection (1)(b), shall be payable by the licensed person making the supply; or (c) under subsection(1)(c), shall be payable by the importer of the excisable goods. ***(d) under subsection (1)(d), shall be payable by the non-resident person offering the service.***	The proposed amendments seek to introduce Excise Duty on excisable services provided by a non-resident in Kenya through a digital platform and will be payable by the non-resident. This proposal will result in added cost of doing business for non-residents supplying excisable services in Kenya through digital platforms. The additional costs may result to increased costs of these services where the Excise Duty is passed on to the final consumer. On the other hand, the proposed amendment is a welcome move as it creates fair competition between residents and non-residents who provide such services as Excise Duty will now be applicable to both while previously it was only applicable on excisable services supplied in Kenya by a licensed person. However, we caution that this proposal does not provide the guidelines on registrations of the non-residents to enable them account for Excise Duty.
Section 7 **Introduction of spirits to the products that the Cabinet Secretary can grant remission of Excise Duty on**	Section 7 (2) of the EDA requires that the Cabinet Secretary may by notice in the Gazette, grant remission of excise duty, wholly or partially, in respect of beer or wine made from sorghum, millet or cassava or any other agricultural products, (excluding barley), grown in Kenya.	The Bill seeks to amend Section 7 (2) of the EDA as follows; *"(2) The Cabinet Secretary may by notice in the Gazette, grant remission of excise duty, wholly or partially, in respect of beer, spirit or wine made from sorghum, millet or cassava or any other agricultural products, (excluding barley), grown in Kenya."*	This proposal is a welcome move as it expands the list of goods on which the Cabinet Secretary may grant remission of Excise Duty to not only include beer, and wine but also spirit, thus creating a level playing field for manufacturers in the sector. This proposal seeks to encourage the manufacturers of spirit made from sorghum, millet or cassava or any other agricultural products, (excluding barley), grown in Kenya to apply for remission of Excise Duty through the Cabinet Secretary. This is in line with the Government agenda of promoting the agriculture sector.

Excise Duty Act, CAP. 472 (EDA)

Issue	Current tax provision	Proposed change	Impact
Section 36 **Payment of Excise Duty on alcoholic beverages increased from twenty-four hours to five working days.**	Section 36 (1A) of the EDA provides that Excise Duty in the case of licensed manufacture of alcoholic beverages is payable to the Commissioner within twenty-four hours upon removal of the goods from the stockroom.	The Bill proposes to amend Section 36 (1A) of the EDA by deleting the words "twenty-four hours" and substituting it with "fifth day of the following month" to read as follows: *"(1A) Despite subsection (1), in the case of a licensed manufacture of alcoholic beverages, excise duty shall be payable to the Commissioner within fifth day of the following month upon removal of the goods from the stockroom."*	This proposal is aimed at enhancing revenue collection for the Government in a timely manner as well as resolve the cash flow challenges faced by licensed manufacturers of alcoholic beverages. In our view, this is a welcome move as it provides the licensed alcoholic beverage manufacturers more time to collect, reconcile and pay Excise Duty.
Amendment of Excise Duty on imported sugar	Part 1 of the First Schedule of the Excise Duty Act provides for Excise Duty on imported sugar excluding imported sugar purchased by a registered pharmaceutical manufacturer at KES. 5 per kg.	The Bill proposes to replace the description and the corresponding excise duty rate for imported sugar as follows: "Imported sugar excluding sugar imported by a registered manufacturer and raw sugar imported for processing by a licensed sugar refinery KES. 7.5 per kg"	The Excise Duty on imported sugar is set to increase from KES. 5 per kg to KES. 7.5 per kg. The proposal further aims to expand the exclusion from Excise Duty from just registered pharmaceutical manufacturers to include all registered manufacturers. This means that any registered manufacturer can now import sugar without the excise duty of KES. 7.5 per kg. Further, by excluding raw sugar imported for processing by a licensed sugar refinery, this will incentivise local sugar refining, potentially boosting the local industry. On the other hand, other importers of sugar will face higher costs due to the increased Excise Duty which could lead to higher prices for consumers if the additional costs are passed on.
Exclusion of Excise Duty on locally assembled electric vehicles	Part 1 of the First Schedule of the Excise Duty Act currently provides for 20% Excise Duty rate on motor vehicles of tariff heading 87.02, 87.03 and 87.04 excluding (i) locally assembled motor vehicles; (ii) school buses for use by public schools; (iii) motor vehicles of tariff no. 8703.24.90 and 8703.33.90; and (iv) imported motor vehicles of cylinder capacity exceeding 1500cc.	The Bill proposes to expand the list of excluded motor vehicles of tariff heading 87.02, 87.03 and 87.04 from the ambit of Excise Duty rate of 20% to include a new item immediately after (i) to read as follows: *"Motor vehicles of tariff heading 87.02, 87.03 and 87.04 excluding* *(i) locally assembled motor vehicles;* *(ia) locally assembled electric vehicles* *(ii) school buses for use by public schools;* *(iii) motor vehicles of tariff no. 8703.24.90 and 8703.33.90; and* *(iv) imported motor vehicles of cylinder capacity exceeding 1500cc "*	The proposed exclusion of Excise Duty on locally assembled electric vehicles is likely to encourage the adoption of cleaner transportation options by making electric vehicles more affordable for consumers. This move supports the local assembly industry, potentially leading to job creation and industrial growth, while also aligning with global trends towards sustainable transportation by promoting significant environmental benefits such as reducing greenhouse gas emissions and air pollution.
Increase in the Excise Duty rate on Cigarette with and without filters	Part 1 of the First Schedule of the Excise Duty Act currently provides that Excise Duty is applicable on Cigarette with filters (Hinge lid and soft cap) at KES. 4,067.03 per mille Cigarettes without filters (plain cigarettes) at KES. 2,926.41 per mille	The Bill proposes to amend the rates by deleting the corresponding rates of Excise Duty and substituting the same with the rates of Excise Duty of KES. 4,100 per mille.	In our view this proposal is aimed at not only harmonizing the Excise Duty charged on cigarettes whether with or without filters but also reflecting externalities resulting from cigarette consumption by increasing the Excise Duty rate.

Issue	Current tax provision	Proposed change	Impact
Increase in Excise Duty on products containing nicotine, nicotine substitutes intended for inhalation without combustion or oral application and liquid nicotine for electronic cigarettes	Part 1 of the First Schedule of the Excise Duty Act currently provides that Excise Duty is applicable on 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 at KES 1,595.00 per kg.	The Bill proposes to amend the rate by deleting the corresponding rate of Excise Duty and substituting the same with the rate of Excise Duty of KES. 2,000 per kg.	This proposal aims to increase the cost of products containing nicotine through increasing the Excise Duty rates. This will discourage their consumption.
Increase in Excise Duty on Liquid nicotine for electronic cigarettes	Part 1 of the First Schedule of the Excise Duty Act currently provides that Excise Duty is applicable on Liquid nicotine for electronic cigarettes at KES 70 per millilitre	The Bill proposes to amend the rate by deleting the corresponding rate of Excise Duty and substituting the same with the rate of Excise Duty of KES 100 per millilitre	Similar to the proposal to increase Excise Duty on nicotine and its products, increasing Excise Duty on liquid nicotine aims to increase its costs to the final consumer hence discouraging its consumption.
Introduction of Excise Duty on imported ink but excluding ink originating from EAC Partner States that meet the EAC Rules of Origin	N/A	The Bill proposes to introduce Excise Duty on imported printing ink of tariff 3215.11.00 and 3215.19.00 but excluding those originating from East African Community Partner States that meet East African Community Rules of Origin at the rate of 15%	This exclusion will encourage trade between the EAC partner states whilst meeting the local demand.
Introduction of Excise Duty on various goods	N/A	The Bill proposes to introduce Excise Duty on the following goods: i) Imported Electric transformers and parts of tariff codes 8504.10.00, 8504.21.00, 8504.22.00, 8504.23.00, 8504.31.00, 8504.32.00, 8504.34.00, 8504.90.00 at the rate of 25%; ii) Imported ceramic sinks, wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing customs cisterns, urinals and similar sanitary fixtures of tariff heading 69.10 at the rate of 35% of the customs value or KES. 100 per Kg; iii) Imported Float glass and surface ground or polished glass, in sheets, whether or not having an absorbent, reflecting or non-reflecting layer, but not otherwise worked of tariff heading 70.05 at the rate of 35% of the customs value or KES. 200 per Kg; iv) Imported ceramic flags and paving, hearth or wall tiles; unglazed ceramic mosaic cubes and the like, whether or not on a backing; finishing ceramics of tariff 69.07 at the rate of 35% of the customs value or KES. 300 per Kg; v) Coal at the rate of 5% of the value or KES. 27,000 per metric tonne	The introduction of a Excise Duty on these product goods will likely increase the business costs potentially leading to higher prices to the final consumer.

Excise Duty Act, CAP. 472 (EDA)

<table>
<tr><th>Issue</th><th>Current tax provision</th><th>Proposed change</th><th>Impact</th></tr>
<tr><td>Increase in Excise Duty on sugar confectionary</td><td>Part 1 of the First Schedule of the Excise Duty Act currently provides that Excise Duty is applicable on imported sugar confectionary of tariff heading 17.04 at KES. 42.917 per kg.</td><td>The Bill proposes to amend this provision by deleting the corresponding Excise Duty rate of Sh. 42.91 per kg and substituting it with, “KES 85.82 per kg”</td><td>The proposed amendment will increase the Excise Duty rate on sugar confectionary by about 100%.
This will result to an increase in the cost passed to the final consumers in spite of the Government drive to raise additional revenue and encourage healthy living by discouraging consumption of sugar.</td></tr>
<tr><td>Introduction of new descriptions and corresponding Excise Duty rates on Imported Emulsion</td><td>Part 1 of the First Schedule of the Excise Duty Act currently provides that Excise Duty is applicable on 3906.90.00 Imported Emulsion B.A.M at the rate of 20%.</td><td>The Bill proposes to insert new descriptions and corresponding rates immediately after tariff description 3906.90.00 Imported Emulsion B.A.M to read as follows:
“3907.99.00 Imported Saturated polyester at the rate of 20%%;
3905.21.00 Imported polymers of vinyl acetate/vinyl esters at the rate of 20%;
3903.90.00 Imported emulsion-styrene acrylic at the rate of 20%;”</td><td>The introduction of Excise Duty on imported saturated polyester, polymers of vinyl acetate/vinyl esters, and emulsion-styrene acrylic will increase costs for importers and potentially raise product prices.
Whilst this generates Government revenue, it may raise costs for local industries importing these materials, hence affecting their competitiveness.</td></tr>
<tr><td>Change in Excise Duty rates on alcoholic beverages</td><td>Part 1 of the First Schedule of the Excise Duty Act currently provides that Excise Duty is applicable on:
i) Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits at KES 243.43 per litre;
ii) Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6% at KES. 142.44 per litre; and
iii) Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6% at Sh. 356.42 per litre</td><td>The Bill proposes to amend the rates as follows;
i) For wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits by deleting Excise Duty rate “at KES 243.43 per litre. “and substituting it with “KES. 22.50 per centilitre of pure alcohol”
ii) For Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non- alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6% by deleting “at KES. 142.44 per litre “and substituting it with “KES. 22.50 per centilitre of pure alcohol”:
Provided that, Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non alcoholic beverages and spirituos beverages manufactured by licensed small independent brewers shall be subject to the rate of KES. 10 per centilitre of pure alcohol.
iii) For Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6% by deleting “at Sh. 356.42 per litre” and substituting it with “KES.16 per centilitre of pure alcohol”.</td><td>The proposed amendments reflect a policy shift by the government to adopt an excise taxation system based on the alcohol content of products. Under this system excise is imposed on a progressive basis, with higher tax being applied to higher categories of alcohol.
It is our view that the proposed amendments will result to increases in Excise Duty for alcoholic beverages with higher percentages of alcoholic content resulting to an increase in the cost.
Moreover, the reduced rate for small independent brewers (KES 10 per centilitre of pure alcohol) is likely intended to support local, small-scale producers, making their products more price-competitive compared to larger manufacturers.</td></tr>
<tr><td>Amendment of Excise Duty on imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90</td><td>Part 1 of the First Schedule of the Excise Duty Act currently provides that Excise Duty is applicable on imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 at the rate of 25%.</td><td>The Bill proposes to amend this item description and its corresponding rate by deleting and substituting the same with the following:
“Imported Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastic, whether or not in rolls of tariff number 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90 but excluding those originating from East African Community Rules of Origin at the rate of 25% or sh.75 kilogramme, whichever is higher”</td><td>Importers of these plastic products from outside the EAC will face higher costs due to the new excise duty structure, potentially leading to higher prices for these items.
Further, by excluding products originating from EAC, this promotes intra-regional trade, encouraging businesses to source these materials from within the EAC.</td></tr>
</table>

<table>
<tr><th>Issue</th><th>Current tax provision</th><th>Proposed change</th><th>Impact</th></tr>
<tr><td>Increase in the Excise Duty rates for various excisable services listed under Part II of the First Schedule to the EDA</td><td colspan="2">
<table>
<tr><th>#</th><th>Description</th><th>Excise Duty rate</th><th>Proposed rate</th></tr>
<tr><td>1</td><td>Telephone and internet data services</td><td>15%</td><td>20%</td></tr>
<tr><td>4A</td><td>Betting</td><td>12.5%</td><td>15%</td></tr>
<tr><td>4B</td><td>Gaming</td><td>12.5%</td><td>15%</td></tr>
<tr><td>4C</td><td>Prize competition</td><td>12.5%</td><td>15%</td></tr>
<tr><td>4D</td><td>Lottery (excluding charitable lotteries)</td><td>12.5%</td><td>15%</td></tr>
</table>
</td><td>The increase in Excise Duty rates for these services are aimed at increasing revenue collection for the Government.

For telephone and internet data services, the increase in the Excise Duty rater will raise the cost of doing business. This move also contradicts the Government’s goal of ensuring citizens have affordable access to information and digital inclusion.

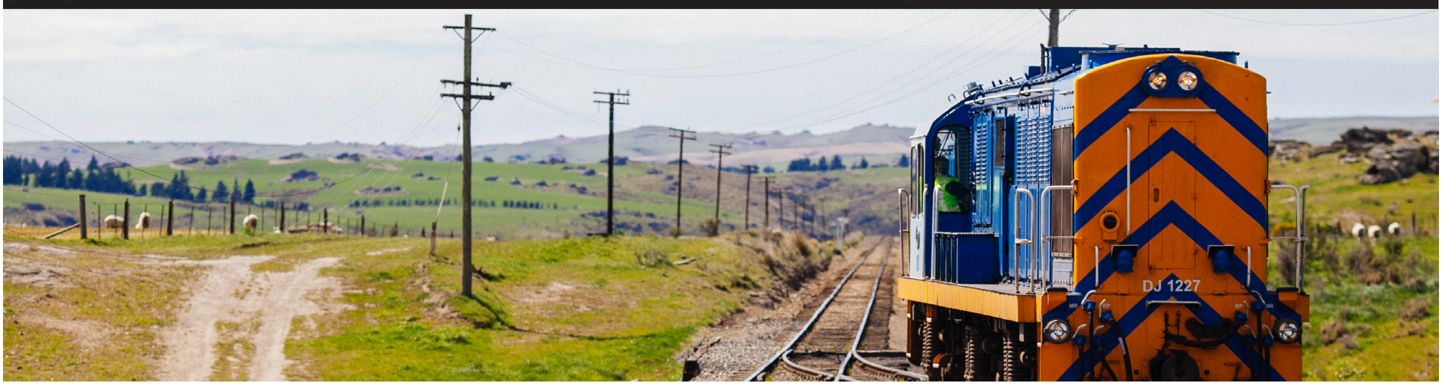
For betting, gaming, prize competitions, and lotteries, the increase in Excise Duty rates are set to discourage excessive participation in gambling activities, addressing social concerns related to gambling addiction.</td></tr>
<tr><td>Expansion of Excise Duty on advertisement on alcoholic beverages, betting, gaming, lotteries and prize competitions to include advertisement made on the internet and social media</td><td>Paragraph 8 of Part II of the First Schedule of the EDA Act states that, “Excise Duty on fees charged on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions shall be at the rate of fifteen per cent.”</td><td>The Bill proposes to amend this paragraph as follows,

“Excise Duty on fees charged on advertisement on the internet, social media, television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions shall be at the rate of fifteen per cent.”</td><td>This proposal is aimed at increasing the Government’s revenue collection on Excise Duty on advertisement on alcoholic beverages, betting, gaming, lotteries, and prize competitions to also include such advertisement made on the internet and social media as well.

Furthermore, this expansion also aims to discourage vulnerable groups, e.g, unwary youth who are mostly on social media and the internet from participation in betting, gaming, price competitions and the lottery, which are all very popular.</td></tr>
</table>

Miscellaneous Fees and Levies Act, CAP 469C (MFLA)

Issue	Current tax provision	Proposed change	Impact
Increase in Railway Development Levy (“RDL”)	Section 8(2) of the MFLA provides for RDL at the rate of 1.5% on goods imported into Kenya for home use.	The Bill seeks to increase the rate of RDL from 1.5% to 2.5%.	The proposed increase will result in a corresponding increase in the cost of goods imported into Kenya. It will adversely impact end consumers as both traders and manufacturers will pass on the cost through the local prices of goods.



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