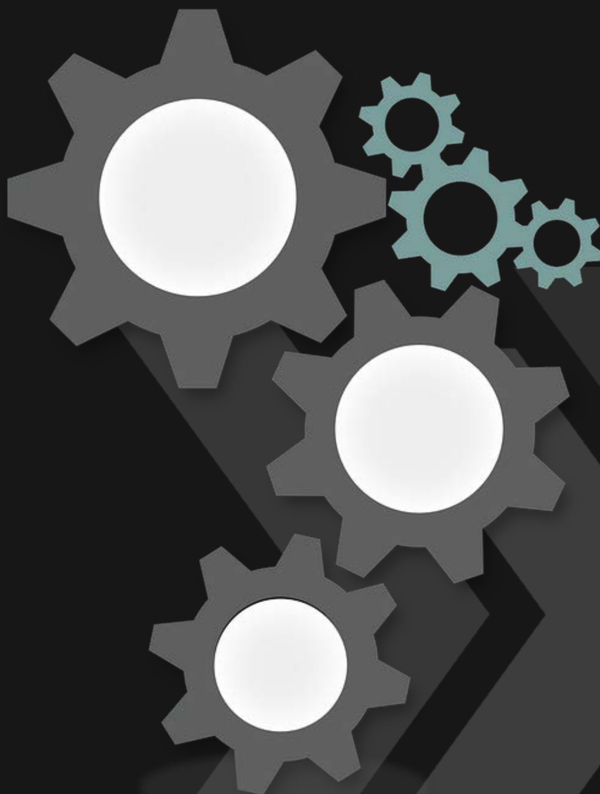
FINANCE BILL, 2023

Impact Analysis of Proposals on Businesses

BDO East Africa Kenya

May 2023



PREAMBLE

The Finance Bill, 2023 ("the Bill") was presented before the parliament on 04 May 2023. The Bill proposes for amendments to the country's tax laws which includes Income Tax Act, Value Added Tax Act, Excise Duty Act, Tax Procedures Act and Miscellaneous Fees and Levies Act. The Bill also proposes changes to other Acts such as the Betting, Gaming And Lotteries Act, the Kenya Roads Board Act, the Kenya Revenue Authority Act, the Employment Act ,the Unclaimed Financial Assets Act, the Statutory Instruments Act And the Retirement Benefits Act.

This newsletter is a summary of the potential tax implications of the provisions contained in the Bill should it be enacted into an Act which is expected to be before 01 July 2023 as provided for in the Public Finance Management Act and coincides with the commencement of the Government's financial year 2023-2024.

We set out below our analysis of the Bills' proposed changes to tax laws.

TABLE OF CONTENTS

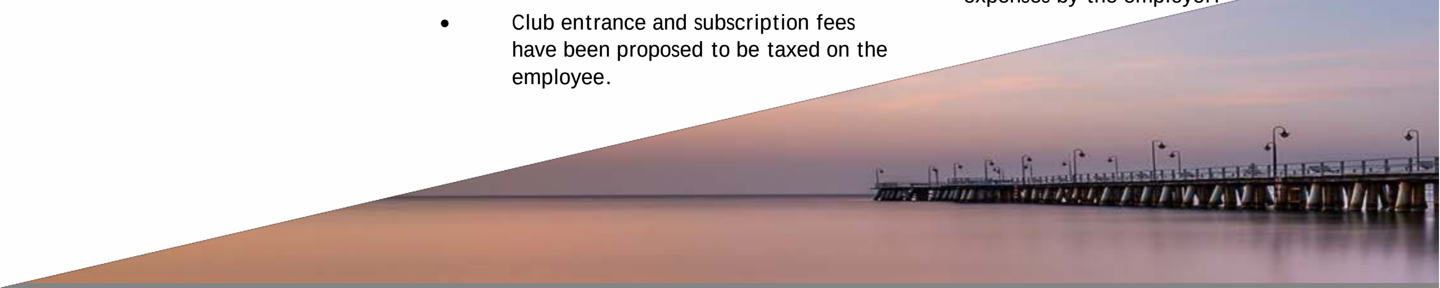
BDO

1. INCOME TAX

TAX HEADS	PROPOSALS	OUR INSIGHTS
REDEFINITION OF WINNINGS FROM GAMING **Proposed Effective Date: 01 July 2023**	▪ The Bill provides the new definition of winnings to mean the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act without deducting the amount staked or wagered.	▪ The proposal to deduct stakes from the amounts won will mean that even the stakes will be taxed. This is set to have a devastating blow to the gaming sector as it will make local gaming unattractive compared to offshore gaming. ▪ The proposal may lead to difficulty.
15% DIGITAL CONTENT TAX **Proposed Effective Date: 01 July 2023**	▪ The Bill introduces Digital content monetisation, which 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; ▪ Advertisement on websites, social media platforms or similar networks by partnering with brands, including endorsements from sellers of such brands; ▪ Sponsorship, where a brand owner pays a content creator for content creation and promotion; ▪ Affiliate marketing, where the content creator earns a commission whenever the audience of the content creator clicks on the product displayed; ▪ Subscription services where the audience pays a periodic fee to access the content and support the content creator; ▪ Merchandise sales where physical goods and services are sold featuring a logo, brand or catchphrase to the audience of the content creator, eBooks, courses, or software; ▪ Membership programme for exclusive content, including early access; ▪ Licensing the content, including photographs, music or other businesses or individuals for use in the user's projects; and ▪ Crowdfunding for raising funds for specific goals for a content creator or another person.	▪ The introduction of digital content monetisation expands the scope of taxable digital services to increase tax revenues by casting the tax net more comprehensively to include more digital services. ▪ This will affect paid partnerships, including brand ambassadors, locals, and non-residents. ▪ The change is likely to generate some additional revenue for KRA.  
REDEFINITION OF IMMOVABLE PROPERTY **Proposed Effective Date: 01 July 2023**	• The current definition of immovable property has been expanded to include land, estate rights, mining and petroleum and other interest, and any other things attached to the ground. It consists of a debt secured by a mortgage or charge on immovable property.	• The expanded definition of immovable property increases the tax base in relation to gains from the sale or transfer of such properties. Disposal of the property will therefore attract more capital gains tax, amongst others.

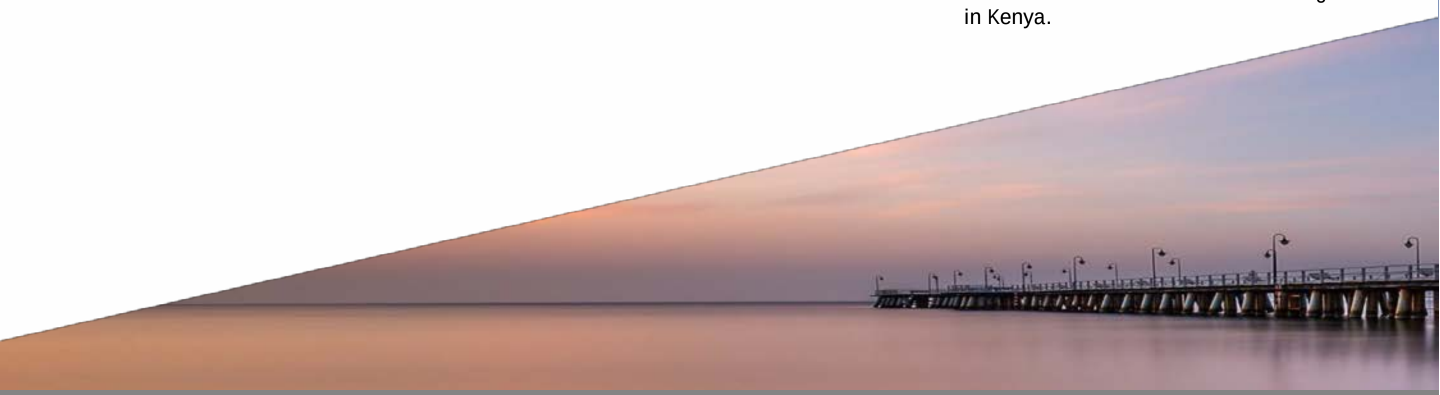
1.INCOME TAX

TAX HEADS	PROPOSALS	OUR INSIGHTS
REDEFINITION OF A "PERSON" **Proposed Effective Date: 01 July 2023**	The Bill proposes a new definition of a 'person" in which a person shall mean; a. In the case of an individual, a reference to a relative of that person. b. In the case of a company, a related person who participates directly or indirectly in the management, control or capital of another person's business.	▪ The expanded definition of a "Person " to include a related person implies that a person's tax liabilities may consist of those of relatives. ▪ Tax liability of ancestors, parents, uncles, aunties, parents, step-parents, children, nieces, nephews etc., may be imposed on an individual. ▪ It will also increase the scope of transactions that require arms-length considerations.
FOREIGN EXCHANGE LOSS AND EBITDA **Proposed Effective Date: 01 July 2023**	The Bill has amended Section 4A on foreign exchange loss such that; • The realised foreign exchange loss shall be deferred (and not taken into account) and claimed over a period of not more than three years from the date the loss was realised by a company whose gross interest paid or payable to a non-resident person exceeds 30% of the company's earnings before interest, taxes, depreciation and amortisation (EBITDA) in any year of income. • Companies with significant foreign exchange exposure may face higher financial risks if they cannot offset exchange losses against taxable income. This could lead to higher borrowing costs and reduced profitability. • Companies may face a higher overall tax burden, reducing profitability and discouraging business expansion. • More complex or expensive hedging strategies may mitigate foreign exchange risk.	▪ The implication is that the loss will not be claimable if the EBITDA restrictions do not reverse within 3 years. ▪ Businesses with foreign exchange losses occasioned by the global currency crisis and the slip of KES against USD will be restricted. ▪ Companies may face a competitive disadvantage compared to businesses in countries where foreign exchange losses are deductible. This could lead to reduced foreign direct investment, impacting economic growth and job creation. ▪ The increased financial risk and reduced competitiveness may lead companies to engage in less international trade, potentially hindering global economic growth. ▪ Businesses may need to adjust their capital structures to minimise the impact of non-deductible foreign exchange losses.
GAINS AND PROFITS FROM EMPLOYMENT **Proposed Effective Date: 01 July 2023**	The Bill proposes to amend section 5 on gains and profits from employment as below: • Mileage and travelling allowance while on official duties will be computed based on the standard mileage approved by the Automobile Association of Kenya. This will be considered a reimbursement not subject to PAYE tax. • Club entrance and subscription fees have been proposed to be taxed on the employee.	▪ This standardises mileage claim rates away from the varying mileage rates provided by different employers. ▪ The law currently taxes these expenses on the employer by adding them back in the tax computation. ▪ The Bill proposes that club entrance and subscription fees shall be deductible expenses by the employer.



1.INCOME TAX

TAX HEADS	PROPOSALS	OUR INSIGHTS
GAINS AND PROFITS FROM EMPLOYMENT … cont'd **Proposed Effective Date: 01 July 2023**	▪ Expenses reimbursements to public officers while on official duties will be subject to tax, notwithstanding the ownership or control of any assets purchased.	▪ The proposal seems to tax reimbursements without regard to those incurred for official purposes. More clarity should be provided before the enactment of the Bill into law by 01 July 2023.
EMPLOYEE SHARES OPTIONS (ESOPS) **Proposed Effective Date: 01 January 2024**	▪ The shares' market value will be determined when the option for computing benefits accruing to employees subscribing to company shares will be exercised.	▪ This is a departure from the current position where the market value is determined at the point when the shares are granted.
EMPLOYEE CASH EMOLUMENTS **Proposed Effective Date: 01 July 2023**	For start-up businesses, employees offered company shares in lieu of cash emoluments will be taxed within 30 days of the earlier of; (a) An expiry of five years from the end of the year of the award of the shares; (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.	▪ This applies only to start-ups who comply with the prescribed conditions of turnover, sector, period of existence and restructured entities.
REPATRIATED INCOME **Proposed Effective Date: 01 January 2024**	▪ A non-resident who carries on business in Kenya through a permanent establishment shall pay tax on repatriated income.	▪ Currently, branches of non-resident companies repatriate after-tax profits with no additional tax. The provision, therefore, imposes higher tariffs on permanent establishments, which could discourage inward foreign investments.
	▪ The tax shall be added to tax chargeable on the income of the permanent establishment. However, the tax rate on the repatriated income has not been provided, probably by the time the bill is enacted into Act.	▪ The proposed tax may conflict with Kenya's existing tax treaties with other countries. This could lead to disputes and potential renegotiations of tax treaties to accommodate the new tax provisions.
	▪ The implementation of the new tax provision might create additional administrative burdens for both the Kenyan tax authorities and multinational companies, as they would need to navigate the complexities of the new tax regime.	▪ The tax on repatriated income could result in double taxation if the income is also subject to tax in the non-resident's home country. This may create an additional financial burden for multinational companies and reduce the attractiveness of investing in Kenya.



1. INCOME TAX

TAX HEADS	PROPOSALS	OUR INSIGHTS
WITHHOLDING TAX CREDITS ON PAYMENTS TO NON - RESIDENTS **Proposed Effective Date: 01 July 2023**	The proposed Bill aims to limit the use of withholding tax credits. Specifically, if an audit adjustment leads to a lower tax amount after withholding tax has already been paid, the excess tax paid cannot be refunded or applied as a deduction against income.	▪ The proposal seems to suggest that it is the responsibility of the taxpayer to compute and pay the correct amount of withholding tax. However, adjustments arise mainly from transfer pricing audits which may reduce expenses that attract withholding tax. ▪ Companies may face a higher tax burden due to the inability to claim refunds or deductions for excess withholding tax paid. This could affect their overall profitability and financial health.
REGISTERED TRUST INCOME **Proposed Effective Date: 01 July 2023**	Income paid to a beneficiary for the purposes of education, medical treatment, housing and income which is collectively below KES 10 million is currently tax-exempt. The proposal repeals this exemption.	▪ This is a continuation of the taxman's intention to reduce or eliminate tax exemptions as per the recent announcements by the tax authorities.
TURNOVER AND PRESUMPTIVE TAX **Proposed Effective Date: 01 January 2024**	▪ Turnover tax currently applies to businesses whose income is between KES 1 million and KES 50 million. The proposal reduces the threshold to between KES 500,0000 to KES 15 million. ▪ Businesses whose turnover will exceed KES 15 million will be taxed under the normal tax regime.	▪ The reduction in threshold brings more small businesses into the taxable category. ▪ In addition, the tax rate has been revised upward to 3% from 1%.
DIGITAL ASSET TAX (DAT) **Proposed Effective Date: 01 September 2023**	▪ A new digital asset tax has been introduced on income derived from the transfer or exchange of a digital asset. ▪ The tax is paid by the owner of the platform or the person who facilitates the exchange or transfer of the digital asset and paid within 24 hours. ▪ A non-resident person who owns a platform shall register in Kenya under the simplified tax regime.	▪ The introduction of a digital asset tax targets anything of value that is not tangible, and cryptocurrencies providing a digital representation of value exchanged with or without consideration. ▪ It also includes non-fungible tokens or any other token of similar nature. ▪ The proposed rate of the digital asset tax is 3% chargeable on the gross receipts.

1.INCOME TAX

TAX HEADS	PROPOSALS	OUR INSIGHTS
DIMINUTION IN VALUE **Proposed Effective Date: 01 July 2023**	▪ Diminution in value of any implement, utensils, loose tools or similar articles not being plant and machinery shall qualify for deduction at a rate of 100% from the current rate of 33.3%.	▪ This is a welcome proposal as it allows expensing these items in the first-year purchase instead of three years.
DEDUCTIBILITY OF EXPENSES **Proposed Effective Date: 01 January 2024**	▪ Effective 01 January 2024, any expenditure or loss where the invoices of the transactions are not generated via an electronic tax invoice management system shall not be allowed for deduction against revenue unless the transactions have been exempted from tax.	▪ Small companies will be excluded from the proposal if they are not VAT-registered, and this will inevitably conflict with the accrual concept if invoices are pending. It is important to note that companies under the VAT threshold are not obligated to register.
INTEREST RESTRICTION UNDER EBITDA **Proposed Effective Date: 01 January 2024**	▪ Interest restrictions under EBITDA apply only to borrowings from non-residents as opposed to the current provision where restrictions are based on local and non-resident borrowings. ▪ Companies engaged in manufacturing whose cumulative investment in the preceding five years is at least five billion shillings and those with investments of at least five billion shillings outside Nairobi and Mombasa counties have been removed from interest capping exemption. ▪ This provision shall not apply where the interest is exempt from tax under the Act. ▪ The definition of “all loans” shall no longer include local loans.	▪ If the interest expense exceeds 30% of EBITDA, it can be deducted in the following three years if the excess interest status is reversed. ▪ The differentiated treatment of local and non-resident borrowings may create an uneven playing field between domestic and foreign lenders, potentially distorting competition in the financial sector. ▪ The focus on non-resident borrowings for interest restrictions might discourage foreign investors from providing financing to Kenyan businesses, potentially reducing foreign investment inflows and access to capital for local businesses.
EXPENSES INCURRED OUTSIDE KENYA **Proposed Effective Date: 01 July 2023**	▪ Expenses incurred outside Kenya by a non-resident person on the remuneration of directors, executive and general administrative expenses will now be allowable.	▪ This proposal is a welcome move as the current provision disallows legitimate expenses incurred in income generation.

1.INCOME TAX

TAX HEADS	PROPOSALS	OUR INSIGHTS

QUALIFYING INTELLECTUAL PROPERTY INCOME

Proposed Effective Date: 01 January 2024

Proposals

- Qualifying interest income that is subject to preferential tax rate shall be determined as follows:

$$\boxed{I = \left(\frac{Q}{T}\right) \times P}$$

Where

- I is income receiving tax benefits;
- Q is the research and development expenditures made by the taxpayer, excluding acquisition costs and related party outsourcing costs;
- T is the research and development expenditures made by the taxpayer, including acquisition costs and related party outsourcing costs; and
- P is 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:
- Provided the intellectual property losses shall only be deducted against academic property income.

Our Insights

- The preferential tax rate on interest income determined by R&D expenditures may encourage companies to invest more in R&D activities, potentially driving innovation and technological advancements in the country.
- The preferential tax treatment of IP income might make the country more attractive to knowledge-based industries, such as technology, pharmaceutical, and creative industries, which rely heavily on IP assets.
- The exclusion of related party outsourcing costs from calculating qualifying R&D expenditures may discourage businesses from outsourcing R&D activities to associated entities.
- This proposal may improve the country's global competitiveness by attracting businesses engaged in R&D and IP-intensive activities, increasing foreign investment and economic growth.

COUNTRY-BY-COUNTRY REPORTING (CbC)

Proposed Effective Date: 01 July 2023

Proposals

Each ultimate parent entity that is resident in Kenya shall file a country-by-country report with the Commissioner if;

- the ultimate parent entity or a constituent entity is not obligated to file a country-by-country report in its jurisdiction of tax residence;
- the jurisdiction in which the ultimate parent entity is resident has a current international tax agreement to which Kenya is a party 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
- there has been a systemic failure of the jurisdiction of the ultimate parent entity's tax residence that the Commissioner notified the constituent entity resident in Kenya.

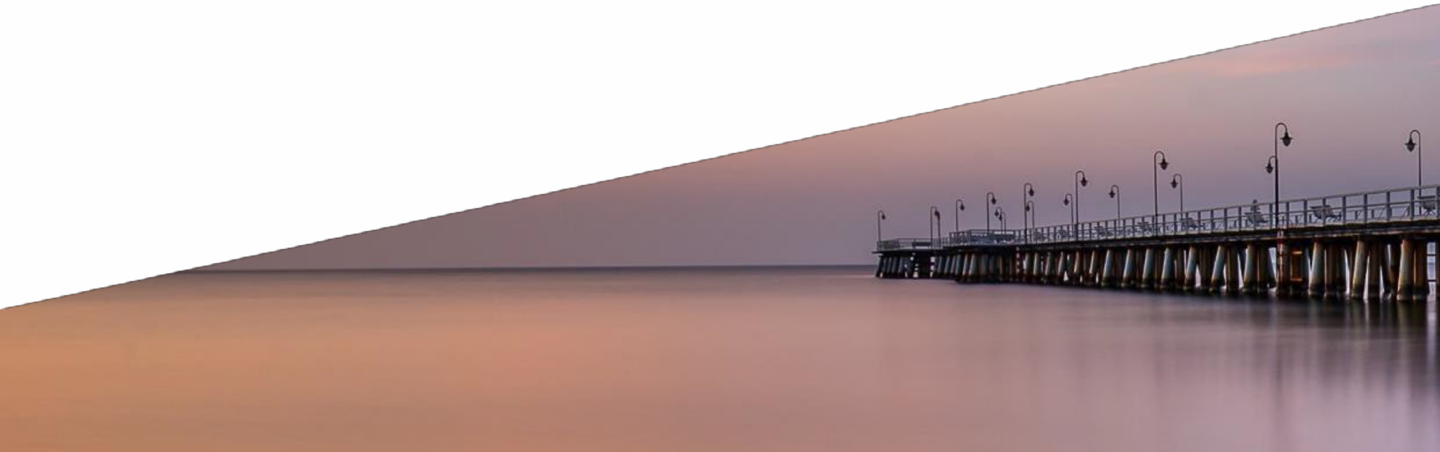
The above provisions shall apply to a multinational enterprise group whose total consolidated group turnover, including extraordinary or investment income, is at least ninety-five billion shillings during the financial year immediately preceding the reporting financial year as reflected in its consolidated financial statements for such preceding financial year.

Our Insights

- The proposal provides clarity on the filing of the CbC reporting.
- The CbC reporting requirement may improve tax transparency by providing tax authorities with more detailed information about the operations and tax arrangements of multinational enterprise (MNE) groups.
- The CbC reporting requirement may encourage MNE groups to strengthen their transfer pricing documentation, as they will need to provide more detailed and accurate information about their intra-group transactions.

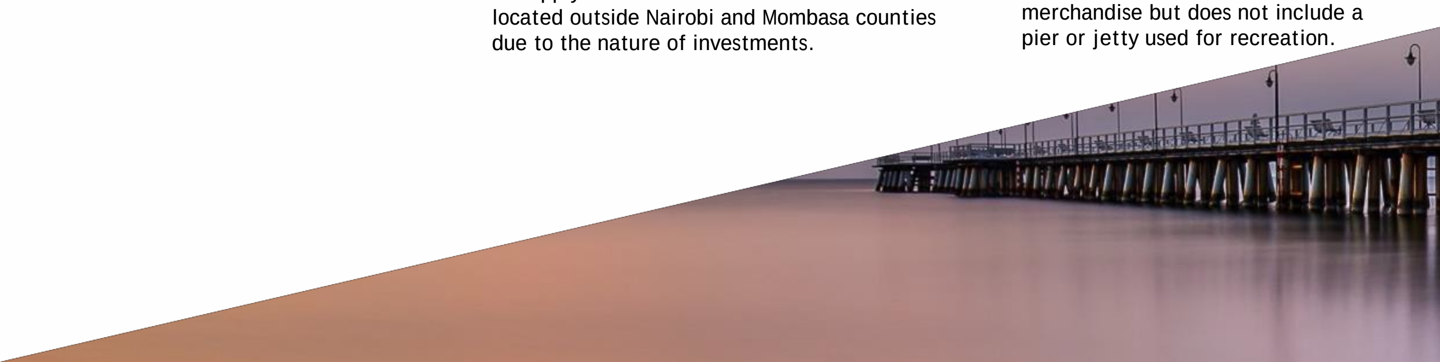
1. INCOME TAX

TAX HEADS	PROPOSALS	OUR INSIGHTS
ULTIMATE PARENT ENTITY **Proposed Effective Date: 01 July 2023**	▪ The proposed Bill suggests a new definition for an ultimate parent entity. This entity would be one that is not controlled by another entity and directly or indirectly owns or controls one or more constituent entities of a multinational enterprise group.	▪ The Proposal provides clarity on what constitutes an ultimate parent entity. ▪ The new definition may prompt MNE groups to reevaluate their current corporate structures and relationships between entities to ensure compliance with the updated definition of an ultimate parent entity.
MEMBERS' CLUBS AND TRADE ASSOCIATIONS **Proposed Effective Date: 01 July 2023**	▪ Gross revenue receipts from members' clubs or trade associations shall be deemed to be business income. However, Joining fees, welfare contributions and subscriptions have been proposed to be excluded. ▪ Trade associations are no longer required to notify the tax authorities to be deemed to carry out business charged to tax.	▪ The proposal is a positive move as subscriptions and contributions will no longer be deemed to be income chargeable to tax, thereby reducing the tax liability.
POST RETIREMENT MEDICAL FUND RELIEF **Proposed Effective Date: 01 January 2024**	▪ Contributions to a post-retirement medical fund shall be eligible for a post-retirement medical fund personal relief just like NHIF and Insurance reliefs.	▪ The relief reduces an individual's personal tax at a rate of 15% of the contributions subject to a maximum of KES 60,000 per annum.
WITHHOLDING TAX **Proposed Effective Date: 01 July 2023**	▪ Sales promotion, marketing and advertising services and digital content monetisation are proposed to attract withholding tax when paid to residents.	▪ Currently, withholding tax applies where payments for these services are made to non- residents.



1. INCOME TAX

TAX HEADS	PROPOSALS	OUR INSIGHTS
RENTAL INCOME **Proposed Effective Date: 01 July 2023**	The Bill proposes that; ▪ A person who receives rental income on behalf of the owner of the premises shall deduct tax but only after being appointed by the Commissioner in writing.	▪ KRA has been struggling to register more landlords into the tax net, and appointing more withholding tax agents promotes the strategy. ▪ The withholding tax rate has been reduced from 10% to 7.5% and is payable within 24 hours after deduction.
FIRST SCHEDULE-EXEMPT INCOMES **Proposed Effective Date: 01 July 2023**	▪ Income of an institution, body of persons or irrevocable trust of a public character established to relieve poverty, distress of the public or advancement of education or religion may apply to the Commissioner for tax exemption. ▪ New requirements for tax exemption eligibility have been proposed and include an entity operating in a transparent and accountable manner without restriction or discrimination. In addition, it must utilise its assets or incomes exclusively for the intended benefits without conferring a private benefit to an individual. ▪ Income of accompany manufacturing human vaccines will not be exempt from tax. ▪ Royalties paid to a non-resident person by a company undertaking the manufacture of human vaccines shall be exempt. ▪ Interest paid to a resident or non-resident person by a company undertaking the manufacture of human vaccines shall be exempt. ▪ Investment income from a post-retirement medical fund and funds transfer from a post-retirement medical fund to a medical insurance cover provider shall be tax-exempt.	▪ The criteria for assessing eligibility for exemption has become more stringent going by the recent suspension of exemptions, waivers and abandonments by the revenue authority. ▪ The tax exemptions for human vaccine enterprises aim to promote local investments in vaccine manufacturing, which non-resident manufacturers mainly undertake. ▪ Organizations affected by the proposed changes may need to adjust their tax planning strategies to optimise their tax liability and ensure compliance with the new tax exemption requirements. ▪ KRA may increase monitoring and enforcement efforts to ensure that organisations claiming tax exemptions meet the new eligibility requirements, leading to a higher level of scrutiny for these entities.
SECOND SCHEDULE-INVESTMENT ALLOWANCE **Proposed Effective Date: 01 January 2024**	The Bill proposes the following capital allowances; ▪ Industrial Building - 10% ▪ Dock - 10% in equal instalments ▪ The enhanced investments deductions of 100% outside Nairobi and Mombasa counties shall not apply to investments that have to be located outside Nairobi and Mombasa counties due to the nature of investments.	▪ Industrial building is used for transport, bridge, tunnel, inland navigation, water and electricity or hydraulic power undertaking. ▪ A 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.



1. INCOME TAX

TAX HEADS	PROPOSALS	OUR INSIGHTS
INDIVIDUAL TAX RATES **Proposed Effective Date: 01 July 2023**	Rates per annum: ▪ On the first KES 288,000 - 10% ▪ On the next KES 100,000 - 25% ▪ On the next KES 5,612,000 - 30% ▪ On all income over KES 6,000,000 - 35%	▪ There will be no increase in taxes for individuals whose earnings are below KES 500,000. ▪ A new tax band of 35% applies to those earning above KES 500,000 monthly.
RATES OF TAX	▪ Branches of foreign company's corporate tax rate has been reduced from 37.5% to 30% effective 01 January 2024. ▪ For local assembly of motor vehicles, extending the 15% rate for a further 5 years depends on achieving a local content of 50% of the ex-factory value of the motor vehicle effective 01 July 2023. ▪ Local content has been defined to mean parts designed and manufactured in Kenya by an original equipment manufacturer in Kenya. ▪ In respect of a company undertaking the manufacture of human vaccines - 10% effective 01 January 2024. ▪ In respect of a rent, premium or similar consideration for the use or occupation of immovable property, 7.5% of the gross amount payable effective 01 January 2024. ▪ In respect of payments for sales promotion, marketing, and advertising services, the aggregate value of which is KES 24,000 in a month or more, five per cent of the gross amount effective 01 July 2023. ▪ In respect of payments relating to digital content monetisation, 15% effective 01 July 2023. ▪ Vans, pick-ups, trucks, prime movers, trailers and lorries, KES 3,000 per tone of load capacity per year or KES.5,000 per year, whichever is higher, provided that advance tax shall not be imposed on the tractors or trailers used for agricultural purposes effective 01 January 2024. ▪ For saloons, station wagons, minibuses, buses and coaches, KES 100 per passenger capacity per month or KES 5,000 per year, whichever is higher effective 01 January 2024. ▪ Turnover tax shall be 3% of the gross receipts effective 01 July 2023. ▪ The tax rate for residential rental income shall be 7.5% of the gross rental receipts effective 01 January 2024. ▪ Digital asset tax shall be at 3% of the transfer or sale value effective 01 September 2023.	▪ The conditional extension of the 15% tax rate for local assembly of motor vehicles based on achieving 50% local content can stimulate local production and encourage the development of the Kenyan automotive industry. ▪ The introduction of a 3% digital asset tax may affect the digital asset market, potentially influencing investment decisions and the growth of the digital asset sector in Kenya.

1.INCOME TAX

TAX HEADS	PROPOSALS	OUR INSIGHTS
TAXATION OF CAPITAL GAINS **Proposed Effective Date: 01 July 2023**	▪ Gains derived from the alienation of shares or comparable interests, including interests in a partnership or trust, if, at any time during the three hundred and sixty-five days preceding the alienation, the shares or comparable interests derived more than 20% of their value directly or indirectly from immovable property situated in Kenya. ▪ The person alienating the share shall notify the commissioner in writing where there is a change of at least 20% in the underlying ownership of the property.	▪ Exempting internal restructuring from capital gains tax, as long as it does not involve property transfers to third parties within a group that has existed for at least 24 months, can encourage businesses to restructure their operations without incurring additional tax liabilities. ▪ By imposing capital gains tax on the alienation of shares or comparable interests that derived more than 20% of their value from immovable property in Kenya within the past 365 days, the proposed changes may encourage longer-term investments in property-based assets.
	▪ 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.	▪ The adjusted cost provisions for property transfers not subject to capital gains tax and subsequent taxable transactions within five years can impact the profitability of short-term property transactions and influence investment decisions.
	▪ The due date for tax payable in respect of property transferred under this Part shall be the earlier of: (a) Receipt of the full purchase price by the vendor; or (b) Registration of the transfer.	▪ The changes may result in tax disputes between taxpayers and tax authorities, particularly in cases where the application of capital gains tax exemptions or adjusted cost provisions is unclear or contested.
	▪ Internal restructuring shall be exempt from capital gains tax, which does not involve a transfer of property to a third party within a group that has existed for at least twenty-four months.	▪ The proposed changes related to capital gains tax on alienation of shares, property transfers, and internal restructuring can increase the complexity of tax planning for businesses and individuals, potentially leading to higher compliance costs and a greater need for professional tax advice.

2.VALUE ADDED TAX

TAX HEADS	PROPOSALS	OUR INSIGHTS
VAT on Liquefied petroleum gas	▪ Removal of VAT on petroleum products will revert them to exempt status.	▪ Currently it is taxable at 8%.
Place of supply of services in Kenya effective 01 July 2023	▪ A supply by a non-resident is deemed to be a supply made in Kenya, whether made to registered or unregistered persons.	▪ Considering a supply from a non-resident as a supply made in Kenya, regardless of the recipient's registration status, will increase compliance requirements for nonresident persons.
Qualification for deduction of input tax by a registered person	▪ A person will only be allowed to claim input tax if the person holds a valid tax invoice and the supplier has declared the sale in return.	▪ Requiring a valid tax invoice and declaration of sale from suppliers before allowing input tax claims can effectively promote tax compliance, prevent fraudulent claims, and improve VAT recovery.
Introduction of VAT on insurance compensation	▪ Where owners of taxable supplies and input VAT has been deducted are compensated for the loss of the taxable supply, the compensation shall be charged VAT.	▪ Charging VAT on compensation for lost taxable supplies, after input VAT deduction, can result in increased tax burden for businesses and individuals. This can have an adverse effect on their financial positions. ▪ Receipt of money for compensation for losses will be treated as a taxable supply only when the input VAT was claimed.
VAT Registration for persons supplying digital services	▪ Suppliers of digital services tax shall be required to register for VAT whether they meet the registration threshold.	▪ Requiring digital service suppliers to register for VAT regardless of meeting the registration threshold has the potential to increase their tax burden and affect their profitability. Such a change could also have an impact on the growth of the digital services sector in Kenya. ▪ This provides clarity on registration requirements for non-resident suppliers of digital services. Previously, the law was silent.
Location for maintaining written records	▪ The Bill proposes to delete the requirement to maintain written records in Kenya.	▪ The proposal allows the taxpayer to keep records in any location provided they can avail them upon request by the tax authorities.
Effective date: 01 July 2023		

2. VALUE ADDED TAX

RECLASSIFICATION OF VAT TREATMENT	Current Rates	Proposed Rates
Liquefied petroleum gas	8%	Exempt
Transfer of business as a going concern	16%	Exempt
Inputs or raw materials locally purchased or imported by manufacturers of fertilizers as approved by the Cabinet Secretary	0%	Exempt
Exportation of taxable services	16%	Exempt
Transportation of sugarcane from farms to milling factories	0%	Exempt
Fertilizers of Chapter 31	0%	Exempt
Agricultural pest control products.	0%	Exempt
All inputs and raw materials, whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary responsible for matters relating to agriculture	0%	Exempt
Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health	0%	Exempt
0402.29.10 - Milk, specifically prepared for infants	Exempt	16%
3002.19.00 - Other- Antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes.	Exempt	16%
Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks. (proposed deletion of paragraph 62 First Schedule)	Exempt	16%
3003.90.90 - Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measurable doses or in forms or packings for retail sale.	Exempt	16%
3005.90.10 - White absorbent cotton wadding, impregnated or coated with pharmaceutical substances, or put up in forms of packings for retail sale for medical, surgical, dental or veterinary purposes.	Exempt	16%

2. VALUE ADDED TAX

RECLASSIFICATION OF VAT TREATMENT	Current Rates	Proposed Rates
3004.90.90 - Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.	Exempt	16%
3003.90.00- Infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale and other medicaments consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale	Taxable	Exempt
3003.90.00- Others	Exempt	16%
3005.90.11, 3005.90.12, 3005. 90.19- White absorbent cotton wadding, impregnated or coated with pharmaceutical substances, or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes	Taxable	Exempt
3003.90.10- Infusion solutions for ingestion other than by mouth put up in measurable doses or forms or packings for retail sale	Exempt	16%

3. TAX APPEALS TRIBUNAL ACT

The Bill proposes that for an appealable decision the taxpayer should deposit 20% of the disputed tax or security equivalent to 20% of the disputed tax before filing the appeal.

Where the High Court decision favours the party who deposited the amount or security, the Commissioner shall credit that amount or security to that party within 30 days after determining the appeal.

- The requirement to deposit 20% of the disputed tax or provide security can significantly burden taxpayers, potentially impacting their cash flow and overall financial stability.
- The proposal may be a barrier to filing an appeal for some taxpayers, particularly smaller businesses and individuals who may not have the financial resources to meet the 20% deposit or security requirement.
- The deposit requirement could create a perception of bias in favour of KRA, as taxpayers may feel that the financial burden of appealing a decision is an unfair advantage given to the tax authority.
- The proposed change may lead to legal challenges, as taxpayers may argue that the deposit requirement is unconstitutional or infringes on their rights to due process and access to justice.
- The deposit requirement can increase the need for professional tax advice, as taxpayers may seek assistance navigating the appeal process and evaluating the financial implications of pursuing an appeal.
- The deposit requirement could lead to a decrease in the number of appeals filed, which may reduce the workload of the appeals process and allow tax authorities to focus on resolving disputes more efficiently.
- The proposed change may impact taxpayers' strategies for resolving tax disputes, as the financial implications of the deposit requirement may influence their decisions on whether to file an appeal, negotiate with tax authorities, or pursue alternative dispute resolution methods.

4. TAX PROCEDURES ACT

TAX HEADS	PROPOSALS	OUR INSIGHTS
REDIFINITION OF TAX DECISION	• Amendment of the tax decision definition to exclude "a refund decision." • Amendment of the part (g) of the tax decision definition to "a demand for a penalty or late payment interest."	• This implies that taxpayers will not be able to contest a decision made by the tax authority on refund matters.
ELECTRONIC TAX INVOICES Proposed Effective Date: 01 September 2023	• The bill proposes the introduction of section 23A to the Tax Procedures Act, where the Commissioner may establish an electronic system through which electronic tax invoices may be issued and records of stocks kept. • A person who carries on business shall issue an electronic tax invoice through the system established and maintain a record of stocks. • The Commissioner may, by notice in the Gazette, exempt a person from the requirements of this section.	• This is likely to result in increased efficiency in tax administration, as the electronic system is expected to improve accuracy and reduce errors associated with manual invoicing and stock records.
AMMENDMENT OF ASSESSMENTS	• The Commissioner retains the authority to amend an assessment further.	• Taxpayers should not assume that their tax liability is final based on an initial assessment and should be prepared for the possibility of further adjustments restricted to a specific time limit.
MUTUAL ADMINISTRATIVE ASSISTANCE IN THE RECOVERY OR COLLECTION TAX CLAIMS	• The Bill proposes introducing section 32A to the Tax Procedures Act) where the Commissioner may recover or collect a tax claim pursuant to an international tax agreement. • A competent authority of a party to the agreement can request the recovery of a tax claim, which must not be contested and can be enforced by the requesting party. • The Commissioner can issue a notice to the person liable to pay the tax, who must admit or contest liability. If challenged, the Commissioner determines whether the penalty is disputed, the dispute is intended to delay or frustrate tax collection, or there is a risk of asset dissipation or concealment. • The Commissioner can commence recovery proceedings if the person fails to comply with the notice.	• Entities that owe taxes in an international context will have to comply with requests made by competent authorities of other countries to recover or collect tax claims. • The new provision may impose additional burdens on taxpayers, who may face recovery proceedings initiated by foreign tax authorities through the Kenyan Commissioner. Taxpayers may need to dedicate more resources to ensure compliance with tax laws in multiple jurisdictions.
REPEAL OF SECTION 37	• The bill repeals section 37 of the Tax Procedures Act, revoking the relief previously granted because of doubt or difficulty in recovery of tax.	• The repeal of this section may result in increased tax liability for some taxpayers who would have previously qualified for relief. It may also result in more rigorous tax enforcement
APPOINTMENT OF RENTAL INCOME TAX AGENTS	• The Commissioner may appoint an agent for collecting and remittance rental income tax to the Commissioner.	• This could shift the responsibility of paying the tax from the landlord to the appointed agent. Landlords would have to liaise with the appointed agent instead of directly remitting the tax to the Commissioner.

4.TAX PROCEDURES ACT

TAX HEADS	PROPOSALS	OUR INSIGHTS
REFUND OF OVERPAID TAX	• The proposal is to extend the period for the Commissioner to determine a refund application from 90 days to 120 days, failure to which the application is deemed approved. • Window for repayment of refund claims approved to be reduced from 2 years from the date of application to 6 months after ascertainment, after which the refund will clear outstanding tax debts	• Refund process will be more seamless as claims will be utilised to settle outstanding liabilities.
OBJECTION TO TAX DECISIONS	• The proposal gives 7 days to taxpayers to provide the information required through the Commissioner's notice in case their objection is not validly lodged. • The Commissioner may make an objection decision within 60 days after the date on which the notice of objection was lodged if the information is not provided. • The bill proposes to remove the condition that a person can add new grounds for appeal only if allowed by the Tribunal or Court.	• The burden of an objection review will be eliminated as information can easily be provided within the 7 days window.
TIME LIMIT FOR ASSESSMENT	• The proposal increases the time limit for the Commissioner to make an assessment (power to inspect goods, records etc.) from 90 to 120 days.	• Tax authorities will have ample time to conclude their assessments.
NEW PROVISION; ELECTRONIC REPORTING Proposed Effective Date: 1st September 2023	• The proposal establishes a data management and reporting system for submitting electronic documents and detailed transactional data relating to such records, including payments made for goods or services exchanged or any other designated commercial or financial transaction.	• This provision will address the rising digital age and the introduction of eTIMS.
TAX SHORTFALL PENALTY Proposed Effective Date: 01 September 2023	• The proposal amends the penalty of deliberate non-compliance from 75% to double the amount. • Non-compliance with electronic tax systems to attract a penalty of one million shillings or an amount equal to ten times the amount of the tax due, whichever is the higher. • The proposal also disallows taxpayers and the Commissioner the powers to apply or allow for the remission of penalties or interest payable, except penalties on tax avoidance.	• More penalties will be imposed on taxpayers for non-compliance • These provisions fail to address wrongful penalties
NEW PROVISION;PENALTY ON IMPERSONATION OF TAX AUTHORITY	• The proposal outlines the definition and penalty for the offence of impersonating an authorised officer. Convicted persons to be liable to imprisonment for a term not exceeding three years.	• This provision will reduce tax fraud by unauthorised officers.

4.TAX PROCEDURES ACT

TAX HEADS	PROPOSALS	OUR INSIGHTS
RECOVERY OF INTERESTS, FINES & PENALTIES **Proposed Effective Date: 01 September 2023**	• The bill proposes that the Commissioner refrains from recovering penalties or interest or fines on tax debt where a person had paid all the principal tax due before the 31 December 2022. • Where all the principal tax due had not been paid before the 31 December 2022, a person shall apply to the Commissioner for an amnesty of interest, penalties or fines on the unpaid tax and propose a payment plan for the outstanding amount subject to stipulated conditions. • Despite the above amnesty granted, any unpaid amounts as of 30 June 2024 shall attract interest and penalties for which no amnesty shall be granted under this section.	• Taxpayers with outstanding tax debts can clear their debts and avoid penalties, interest, or fines. This relieves taxpayers who have been struggling to pay their taxes and encourages compliance with tax laws.
NOTICE FOR TAX COLLECTION	The bill proposes amendment of section 42 of the Tax Procedures Act, 2015, of subsection 14 where the Commissioner shall not issue a notice under this section unless; • The taxpayer has defaulted in paying an instalment. • The Commissioner has raised an assessment, and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period. • The taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines. • The taxpayer has made a self-assessment and submitted a return but has not paid the taxes due before the due date lapsed. • The taxpayer has not appealed against an assessment specified in a decision of the Tribunal or Court.	• Taxpayers must comply with their tax obligations and respond to any notices from the Commissioner within the timelines stipulated to avoid penalties and interest charges.
NEW PROVISION; CONCURRENT CIVIL AND CRIMINAL PROCEEDINGS IN TAX CASES	• The proposal provides that if a matter under a tax law is in dispute in both a criminal case and a civil case, the fact that it is being addressed in both cases will not be a reason to delay or stop either the criminal or civil case. In other words, the two cases can proceed concurrently.	• This provision will enable the faster conclusion of tax cases

5.EXCISE DUTY ACT

TAX HEADS	PROPOSALS	OUR INSIGHTS
The Authority of the Commissioner to adjust the specific excise duty rates	• The bill proposes that the Authority of the Commissioner adjust the specific excise duty rates via a Gazette notice after every two years to consider inflation to be revoked.	• The proposed amendment will relieve licensed manufacturers of excisable goods on high excise duty rates adjusted to reflect the effects of inflation after every two years according to Section 10 of the Excise Duty Act despite the same authority granted to the Cabinet Secretary to adjust the rates at any given time through a Gazette Notice or the National Assembly.
The Commissioner to provide a licensed person who has lodged notice of appeal with written notice of actions to be taken after 14 days upon issuance of the notice.	• A licensed person will now have only 14 days from the date he receives the notice of actions to be taken by the Commissioner on the appeal lodged by the person. This means that when the licensed person receives the notification of actions to be taken, he will remedy the grounds of Suspension of license or revocation of the license upon which the Commissioner shall revoke the suspension if the remedies are provided within the specified timelines.	• Keeping records and relevant documentation of obtaining the licence is Critical. • This will ease the timelines in resolving the disputes related to the Suspension of licenses.
Offences and fines on excise stamps enforcement	• The Bill proposes to introduce excise duty offences under Section 28, new Sub-Section 6, and a fine not exceeding KES five million upon conviction or Imprisonment not exceeding three years or both under Subsection 7.	• Enacting the bill will regulate fake or counterfeit dealings of any kind in all exercisable goods. • This would be a welcome move to eliminate counterfeit excisable goods. • The penalties will force greater keenness in compliance and eliminate tax evasion on excisable goods. • The bill will eliminate unfair competitors in the excisable goods industry dealing in counterfeit, cheap and fake excise goods.
Payment of excise duty on betting and gaming within 24 hours and to give power to the Commissioner to enforce through a Gazette notice the payment of excise duty collected from any sector within 24 hours of closing transactions.	• The bill proposes that all excise duty on betting and gaming be remitted to the Commissioner within 24 hours from the date of the transaction before “midnight”. Non-compliance with this proposal may attract fines and penalties.	• Industry players from all sectors need absolute keenness and readiness to unforeseen Gazette notices by the Commissioner that may require them to remit excise duty collected from excisable goods within 24 hours • Non-compliant licensed persons will risk the suspension of their licenses.

5. EXCISE DUTY ACT

RECLASSIFICATION OF EXCISE TREATMENT

The First Schedule, PART I (excisable goods) amendments		
Proposed Amendments	**Description**	**Our insights**
Deletion of the tariff number 2709.00.10 appearing in paragraph 1, and the corresponding tariff description and rate of duty	2709.00.10 Condensates per 10001@ 20degC KES 6,225.00	This item refers to liquid petroleum gas meaning the excise duty in LPG has been scrapped off making it cheaper to the taxpayer.
Deletion of the tariff description "Imported White chocolate including chocolate in blocks, slabs or bars of tariff nos. 1806.31.00,1806.32.00,and1806.90.00"and substituting therefor the following tariff Description: Imported white chocolate of heading 1704; chocolate and other food preparations containing cocoa of tariff nos. 1806.31.00,1806.32.00 and 1806.90.00	Imported White chocolate including chocolate in blocks, slabs or bars of tariff nos. 1806.31.00 , 1806.32.00, and 1806.90.00 KES 242.29 per kg	
Insertion of the word "Imported" immediately before the tariff description "Articles of plastic of tariff heading 3923.30.00 and 3923.90.90"	Articles of plastic of tariff heading 3923.30.00 and 3923.90.90 10%	Provision has been made for imported plastic only leaving out locally produced plastic thus encouraging local production of the same.
Deletion of the word "imported" appearing in the description "Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni, couscous, whether or not prepared" appearing in paragraph 1	Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni, couscous, whether or not prepared 20%.	This provides for pasta to be taxed irrespective of import or local production meaning non-discrimination in tax
Deletion of the word "imported" appearing in the description "Imported sugar confectionary of tariff heading 17.04" appearing in paragraph 1	Imported sugar confectionary of tariff heading 17.04; KES 40.37 Per kg	Allows for the taxation of both local and imported sugar at the same rate. Resolves discrimination in tax of commodity.
Insertion of the following new items at the end of the second table appearing in paragraph 1: • Imported fish KES 100,000 per metric ton or 20%, whichever is higher • Powdered juice - KES 25 per kg • Sugar excluding sugar imported or locally purchased by a registered pharmaceutical manufacturer - KES 5 per kg • Human hair and other products of heading 6703; - 5% • Wigs, false beards, eyebrows and eyelashes, switches and the like, and other products of heading 6704; - 5% • Artificial nails of tariff no. 3926.90.90 - 5% • Imported cement 10% of the value or KES 1.50 per kg, whichever is higher • Imported furniture 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 Test liner of heading 4805.24.00 - 25% • Imported fluting medium of heading 4805.19.00 - 25%	The said items were not provided for in PART I	

5.EXCISE DUTY ACT

RECLASSIFICATION OF EXCISE TREATMENT

First Schedule, PART II amendments:		
Proposed Amendments	**Description**	**Our insight**
Deletion the words "twenty percent" appearing in paragraph 1 and substituting therefor the words "fifteen percent"	Telephone and internet data services shall be charged excise duty at a rate of twenty percent of their excisable value	The proposed amendment has lessened the burden of tax on call and data making it cheaper for the taxpayer in consuming the said service.
Deletion of the words "twenty percent" appearing in paragraph 2 and substituting therefor the words "fifteen percent"	Excise duty in fees charged for money transfer services by banks, money transfer agencies and other financial service providers shall be twenty percent of their excisable value	The proposed amendment has lessened the burden of tax on the taxpayer in terms of the charges incurred in consuming this service.
Deletion of the words "shall be twelve percent" appearing in paragraph 3 and substituting therefore the words "or payment service provides licensed under the National Payment System Act, 2011, shall be fifteen percent"	Excise duty on fees charged for money transfer services by cellular phone service providers, shall be twelve percent of their excisable value	
Deletion of the words "seven-point five per cent" appearing in paragraph 4A and substituting therefor the words "twenty percent"	4A.Excise duty on betting shall be seven-point five per cent of the amount wagered or staked.	Increases the burden of taxes on betting firms and punters.
Deletion the words "seven-point five per cent" appearing in paragraph 4B and substituting therefor the words "twenty percent"	4B.Excise duty on gaming shall be seven-point five percent (7.5%) of the amount wagered or staked.	Increases the burden of taxes on betting firms and punters.
Deletion of the words "seven-point five per cent" appearing in paragraph 4C and substituting therefor the words "twenty percent"	4C. Excise duty on prize competition shall be seven- point five percent of the amount paid or charged to participate in a prize competition.	Increases the burden of taxes on betting firms and punters.
Deletion the words "seven-point five per cent" appearing in paragraph 4D and substituting therefor the words "twenty percent"	4D Excise duty on lottery (excluding charitable lotteries) shall be seven-point five percent of the amount paid or charged to buy the lottery ticket.	Increases the burden of taxes on betting firms and punters.

BDO

5. EXCISE DUTY ACT

RECLASSIFICATION OF EXCISE TREATMENT

First Schedule, PART II amendments:		
Proposed Amendments	**Description**	**Our insight**
Deletion the word "fees" In paragraph 6 and substituting therefor the words "any amount charged in respect of lending"	Excise duty on fees charged by digital lenders at a rate of twenty percent	This amendment makes sure that digital lenders pay fair share of the taxes. And the same is a new avenue created to expand the collection of taxed from them by the commissioner
Deletion of paragraph 7	Excise duty on importation of cellular phones, shall be at ten per cent of the excisable value.	The duty on importation of cellular phones has been left out. Meaning the cost of purchasing cellular phones by taxpayers will be cheaper considering the excise duty has been scrapped off.
Insertion of the following new paragraph immediately after paragraph 7—8. 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	Paragraph 8 was not existing and the act did not clearly provide for excise tax to be paid on advertisements.	The proposed amendment has expanded the scope of fees to be charged on advertisements through various mediums, which was not provided for. The commissioner has been provided with a new avenue to generate revenue.
The First Schedule, PART III amendments:		
Proposed Amendments	**Description**	**Our insight**
Insertion of the words "or gaming" immediately after the word "betting" appearing in the definition of "amount wagered or staked"	"amount wagered or staked" means the amount of money placed by a person for an outcome in a betting transaction.	The proposed amendment expands the scope of activities engaged in betting by punters.
Deletion of the words "relating to their licensed activities" appearing in the definition of "other fees"	"other fees" includes any fees, charges or commissions charged by financial institutions relating to their licensed activities, but does not include interest on loan or return on loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder.	The proposed amendment bring certainty as to what fees is subject to excise tax being lending of money strictly and not any other activities that is outside the scope of providing monetary services.

6. MISCELLANEOUS FEES & LEVIES ACT

TAX HEADS	PROPOSALS	OUR INSIGHTS
Reduction of Import Declaration Fee ("IDF") from 3.5% to 2.5% of the customs value. **Proposed Effective Date: 01 July 2023**	The proposed reduction of IDF fees from 3.5% to 2.5% of the customs value will reduce the costs associated with importation.	Reduction of IDF will result in a reduction of importation cost for goods, especially for manufacturers whose input costs will be reduced by a 1% margin.
Abolishment of the IDF preferential rate of 1.5% applicable on: • **Raw materials and intermediate products imported by manufacturers.** • **Inputs for construction of houses under an Affordable Housing Scheme.** • **Goods imported under the East Africa Community Duty** • **Remission Scheme** **Proposed Effective Date: 01 July 2023**	The abolishment of the IDF preferential rate of 1.5% will have an impact of increasing the importation costs for: Manufacturers that import raw materials and intermediate products. • Inputs for construction of houses under the Affordable Housing Scheme. • Goods imported under the East Africa Community Duty Remission Scheme.	Despite the abolishment of the IDF preferential rate of 1.5%, the affected persons or imports will only realise an increase of 1% of the customs value as the Bill proposes to reduce the standard IDF rate from 3.5% to 2.5%.

PROPOSED CHANGES ON APPLICATION OF IDF

ITEM	CURRENT RATE	PROPOSED RATE
Gifts for diplomatic and consular missions and to the United Nations Missions	Exempt	1.5% of the customs value
Goods for official use by institutions or organizations exempted under the Privileges and Immunities Act (other than diplomatic and consular missions, the United Nations and its agencies which previously exempt)	3.5% of the customs value	Exempt
Aircraft of unladen weight not exceeding 2,000kg and helicopters of heading 8802.11.00 and 8802.12.00	3.5% of the customs value	Exempt
Spacecraft and parts thereof of Chapter 88	3.5% of the customs value	Exempt
Aircraft parts thereof of Chapter 88	3.5% of the customs value	Exempt
Material supplies of equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service	3.5% of the customs value	Exempt
Goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya	3.5% of the customs value	Exempt
Liquified petroleum gas	3.5% of the customs value	Exempt

Proposed Effective Date: 01 July 2023

6. MISCELLANEOUS FEES & LEVIES ACT

TAX HEADS	PROPOSALS	OUR INSIGHTS
Reduction of Railway Development Levy ("RDL") from 2.5% to 1.5% of the customs value. **Proposed Effective Date: 01 July 2023**	The Bill proposes a reduction of RDL fees from 2.5% to 1.5% of the customs value which will reduce the costs associated with importation	Reduction of RDL will result in a reduction of importation cost for goods especially for manufacturers whose input costs will be reduced by a 1% margin.
Abolishment of the RDL preferential rate of 1.5% applicable on: • Raw materials and intermediate products imported by manufacturers. • Inputs for the construction of houses under an affordable housing scheme. **Proposed Effective Date: 01 July 2023**	The abolishment of RDL preferential rate of 1.5% will be inconsequential to the Manufacturers that import raw materials and intermediate products and cost of inputs for construction of houses under the Affordable Housing Scheme as the Bill proposes to reduce the applicable RDL rate to 1.5% of the customs value which is the rate that the affected importers were entitled to.	• The proposed amendment will align the MFLA to allow for non-discriminatory application of RDL at the rate 1.5% for persons or imports not specifically exempted under Part B of the Second Schedule to the MFLA.

PROPOSED CHANGES ON APPLICATION OF RDL

ITEM	CURRENT RATE	PROPOSED RATE
Material supplies of equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service	2.5% of the customs value	Exempt
Goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya	2.5% of the customs value	Exempt
Liquified petroleum gas	2.5% of the customs value	Exempt
Aircraft, spacecraft, and parts thereof	2.5% of the customs value	Exempt

Proposed Effective Date: 01 July 2023

6. MISCELLANEOUS FEES & LEVIES ACT

TAX HEADS	PROPOSALS	OUR INSIGHTS
Introduction of Export and Investment Promotion Levy that will be subjected on imports of specified items as provided for under the MFLA. **Proposed Effective Date:** **01 July 2023**	A new levy called the Export and Investment Promotion Levy is being proposed under the Bill for certain imported items. Its main purpose is to promote investments and other initiatives. The levy will be paid into a fund managed by the Public Finance Management Act to increase manufacturing, exports, job creation, and savings on foreign exchange, and to promote investments. However, goods from Other East African Community Partner States subject to the levy will be exempted.	The introduction of the Export and Investment Promotion Levy is ideally an additional cost to importers of specific sensitive items. The Export and Investment Promotion Levy's purposes will be to discourage the importation of those items subject to the levy while encouraging local production due to the additional costs associated with the importation of the same.
Introduction of export and investment promotion levy at 10% of the customs value on the following products: **Proposed Effective Date:** 01 September 2023	The Bill has proposed for specific items listed under the Third Schedule to the MFLA to be subjected to the Export and Investment Promotion Levy, specifically: • Cement clinkers of Tariff No. 2523.10.00 • Semi-finished products of iron or non-alloy steel containing, by weight, <0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness of Tariff No. 7207.11.00 • Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross-section measuring less than 8 mm of Tariff No. 7213.91.10 • Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter; other of Tariff No. 7213.91.90 • Uncoated kraft paper and paperboard, in rolls or sheets; Kraft liner; Unbleached of Tariff No. 4804.11.00 • Sack kraft paper; Unbleached of Tariff No. 4804.21.00 • Other kraft paper and paperboard weighing 150 g/m2 or less: Unbleached of Tariff No. 4804.31.00 • Sacks and bags, having a base of a width of 40 cm or more of Tariff No. 4819.30.00 • Other sacks and bags, including cones of Tariff No. 4819.40.00	The proposal will automatically increase the cost of importation of the listed items subject to the levy by an additional 10% of the customs value. 

6. MISCELLANEOUS FEES & LEVIES ACT

PROPOSED CHANGES ON APPLICATION OF EXPORT LEVY

ITEM		CURRENT RATE	PROPOSED RATE
TARIFF NO.	DESCRIPTION		
4101.20.00	Whole unsplit hides and skins, of a weight per skin not exceeding 8 kg when simply dried, 10 kg. when dry salted, or 16 kg. when fresh, wet salted or otherwise preserved.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4102.21.00	Raw skins of sheep or lambs (pickled, but not tanned, parchment-dressed or further prepared), without wool on whether or not split, other than those excluded by Note 1(c) to Chapter 41.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4103.20.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or (c) to this Chapter, of reptiles.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4103.30.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), but not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter, of swine.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4103.90.00	Other raw hides and skins other than of reptiles, swine, goats or kids.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4104.19.00	Other tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared, in the wet state (including wet - blue).	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4101.40.00	Hides and skins of equine animals.	80% or USD 0.52 per kg.	Not Applicable
4101.50.00	Whole hides and skins, of weight exceeding 16 kg.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4101.90.00	Other, including butts, bends and bellies.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4102.10.00	Raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1(c) to Chapter 41.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4301.10.00	Raw furskins of mink, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4301.80.00	Other raw furskins, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4301.90.00	Heads, tail, paws, and other pieces or cuttings, suitable for furriers' use.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4302.11.00	Whole skins, with or without head, tail or paws, not assembled, of mink.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4302.19.00	Other whole skins, with or without head, tail or paws, not assembled.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4302.20.00	Heads, tails, paws and other pieces or cuttings, not assembled.	80% or USD 0.52 per kg	50% or USD 0.32 per kg whichever is higher
1703	Molasses resulting from the extraction or refining of sugar	N/A	20% of customs value

Proposed Effective Date: 01 July 2023

6. MISCELLANEOUS FEES & LEVIES ACT

PROPOSED CHANGES ALIGNING THE MFLA WITH THE EAST AFRICA COMMUNITY COMMON EXTERNAL TARIFF, 2022 REVISIONS

The East Africa Community Common External Tariff ("EAC CET") was revised in 2022.

The revised EAC CET included the reclassification of specific items under new tariff numbers and descriptions. To align the MFLA with the EAC CET's tariff number reclassification for products that attract Export Levy based on their tariff classification, the Bill proposes the following amendments as tabulated below.

Current Tariff No.	Tariff Description	Rate	Proposed Amendment (Reclassification Tariff No. & Description)
8002.00.10	Tin waste and scrap.	20% of customs value	Tariff No. 8002.00.00
8105.00.00	Bismuth and articles thereof including waste and scrap.	20% of customs value	Tariff No. 8106.10.00 and Tariff No. 8106.90.00
8105.00.00	Bismuth and articles thereof including waste and scrap.	20% of the customs value	Tariff No. 8105 Description "Cobalt mattes and other intermediate products of cobalt metallurgy; cobalt and articles thereof, including waste and scrap".
8107.30.00	Waste and scrap of cadmium	20% of the customs value	Tariff No. 8112.61.00
8109.30.00	Waste and scrap of zirconium.	20% of the customs value	Tariff No. 8109.31.00 Tariff No. 8109.39.00
8110.20.20	Waste and scrap of antimony	20% of the customs value	Tariff No. 8110.20.00

Proposed Effective Date: 01 July 2023

7. CHANGES PROPOSED TO OTHER ACTS

TAX HEADS	PROPOSALS	OUR INSIGHTS
EMPLOYMENT ACT **Proposed Effective Date: 01 July 2023**	<u>Introduction of the National Housing Development Fund (NHDF) statutory contribution</u> The Bill proposes the introduction of the NHDF contribution payable to the NHDF on or before the 9th day of the succeeding month in which the deduction was made. The NHDF contribution is a statutory deduction on an employee's employment income at the rate of 3% of the employee's basic salary, with the employer matching the same to a combined maximum of KES 5,000 a month. The employer will be responsible for deducting and remittance the NHDF statutory deduction. The proposed benefits of the NHDF statutory contribution shall be the purchase of a home under the Affordable Housing Scheme by an employee eligible for participation in the scheme. Where an employee does not meet the eligibility criteria for participation in the Affordable Housing Scheme, the employee will be entitled to the following upon the earlier expiry of seven years from the date of first payment or attainment of the retirement age with respect to their cumulative contributions and accrued return: Transfer of the funds to the contributor's pension or retirement benefits scheme registered with the Retirement Benefits Authority. • Transfer the funds to any person registered and eligible for affordable housing under the NHDF. • Transfer of the funds to a spouse or dependent children. • Receipt of the funds by the employee, which will be considered taxable income. The Bill proposes the empowerment of the Cabinet Secretary responsible for matters relating to housing in consultation with the Cabinet Secretary to the National Treasury to publish Regulations outlining the qualifications for participation in the Affordable Housing Scheme. The Regulations are expected to be published on or before implementation of the NHDF.	The aim of the proposed amendments is to increase home ownership, improve the standards of living and encourage saving towards home ownership. However, the proposed amendments will result in reduced net pay for the employee and an increase in employment costs to the employer, notwithstanding the Affordable Housing Relief provided for under the ITA at the rate of 15% of the employee's contribution to a limit of KES 108,000 per annum. It is important to note that the Bill has yet to propose an appropriate amendment of the provisions of the ITA to allow for NHDF employee contributions to be treated as tax-deductible when computing employment income subject to PAYE. However, consideration of the NHDF contributions as tax-deductible would be welcomed to cushion employees, preferably low-income earners, from a significant deduction on their net pay due to NHDF contributions.
UNCLAIMED FINANCIAL ASSETS ACT **Proposed Effective Date: 01 July 2023**	<u>**Allowance for a claimant to assign the right to claim**</u> The Bill proposes to amend the Unclaimed Financials Assets Act to allow a claimant to assign their rights to claims to other suitable persons.	The proposed amendment, if adopted, will allow designated representatives of claimants to receive assets or amounts upon a successful claim of the unclaimed financial asset from the Unclaimed Financial Assets Authority.

7.CHANGES PROPOSED TO OTHER ACTS

TAX HEADS	PROPOSALS	OUR INSIGHTS
BETTING, GAMING AND LOTTERIES ACT **Proposed Effective Date: 01 July 2023**	Betting, lotteries, gaming and prize competition tax to be collected by the Kenya Revenue Authority in accordance with the TPA The Betting, Lotteries and Gaming Act ("BLGA") governs the Gaming Industry. In addition to the regulation of the industry through the Betting Control and Licensing Board ("BLCB"), the BLGA also imposes taxes, specifically on betting, lotteries, gaming and prize competition. The Commissioner-The BLGA empowers the general to collect taxes. The Bill proposes to empower the Commissioner further to collect the Betting Tax, Lottery Tax, Gaming Tax and Prize Competition Tax pursuant to the processes and procedures set out in the TPA.	The anchoring in law for the Commissioner to collect taxes charged under the BLGA pursuant to the TPA will assist in enforcing compliance. 
KENYA REVENUE ACT **Proposed Effective Date: 01 July 2023**	<u>KESRA's expanded reach to be anchored in law</u> The Kenya Revenue Authority (KRA) is primarily responsible for administrating and enforcing tax laws and regulations, with its primary function being collecting taxes. In undertaking its function, KRA established the Kenya School of Revenue Authority (KESRA), which used to exclusively provide training and capacity building to the Authority's staff specialising in Tax and Customs Administration, Fiscal Policy and Management. KESRA has since then expanded its reach to the general public. Through the Finance Act 2020, the KRA Act was amended to anchor in law other areas of practice in which it may be involved. The Bill proposes to amend the KRA Act further to clearly state and reflect the expanded reach of KRA in providing capacity building and training to the Authority's staff and the general public. In addition, including "other jurisdictions" allows for it to also collaborate with other institutions in other countries, especially those that may undertake a similar role.	The proposed amendment will align the current and future anticipated practices of KRA to the KRA Act.

8. ABOUT BDO

BDO Global

BDO is one of the largest global accounting and advisory network. BDO's global organisation extends across 164 countries and territories, with 111,307 professionals working out of 1,803 offices. BDO endeavors to deliver truly exceptional client service through a tailored solutions approach, while partnering with our employees and clients globally.

BDO in Kenya

BDO in Kenya, as part of the international BDO network, has committed to provide our clients with exceptional services.

Our team of professionals conform to the highest international standards in an extensive range of professional services, including:

- Audit & Assurance Services
- Tax Services
- Business Services & Outsourcing Services
- Business Advisory/Consulting Services

BDO East Africa Kenya

If you have any questions, comments or suggestions, please contact us. To learn more about BDO East Africa Kenya, please visit www.bdo-ea.com

SANDEEP KHAPRE
Regional CEO
sandeep.Khapre@bdo-ea.com

CLIFFORD AH CHIP
Managing Partner
clifford.ahchip@bdo-ea.com

STEVE OKOTH
Tax Director
steve.okoth@bdo-ea.com

HENRY SANG
Tax Director
henry.sang@bdo-ea.com

NZIOKA MUINDI
Senior Tax Manager
nzioka.muindi@bdo-ea.com

PETER MWANGI
Senior Tax Manager
peter.mwangi@bdo-ea.com

JOHN KOMU
Tax Manager
John.komu@bdo-ea.com

MAGDALENE WAVINYA
Tax Manager
magdalene.wavinya@bdo-ea.com

Copyright © 2023

BDO East Africa Kenya, a partnership registered in Kenya, is a member of BDO International Limited: an international network of independent member firms.

BDO is the brand name for the BDO network and for each of the BDO Member Firms.

This document shall not be regarded as professional advise and the reader is expected to seek specific advice. The accuracy of the information contained herein may be impacted by legal and regulatory measures put in place by the Government of Kenya.