



## KENYAN TAX LEGISLATIVE CHANGES AS INTRODUCED BY THE FINANCE ACT, 2023





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**The Finance Act, 2023 made changes to the tax statutes listed below: -**

- i. Income Tax Act**
- ii. Value Added Tax Act**
- iii. Tax Appeals Tribunal**
- iv. Excise Duty Act**
- v. Tax Procedures Act**
- vi. Miscellaneous Fees and Levies Act**

**Important Dates to Note**

- **The Finance Act came into force on 1<sup>st</sup> July 2023.**
- **Some of the provisions will however become effective on later dates. We have highlighted the specific dates within our points to note.**

# INCOME TAX ACT

**The proposed changes are effective on 1 July 2023,  
unless otherwise indicated**

Provision in the Legislation	Amendment	Points to Note
Section 2	<p><b>a.</b> by deleting the definition of “winnings” and substituting therefor the following definition—</p> <p>“winnings” means the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act, excluding the amount staked or wagered in that transaction;</p> <p><b>b.</b> by inserting the following new definitions in proper alphabetical sequence—</p> <p>“digital content monetisation” means offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel, in any of the following forms—</p> <p>(a) advertisement on websites, social media platforms or similar networks by partnering with brands including endorsements from sellers of such brands;</p> <p>(b) sponsorship where a brand owner pays a content creator for content creation and promotion;</p> <p>(c) affiliate marketing where the content creator earns a commission whenever the audience of the content creator clicks on the product displayed;</p>	<p>The change in definition clarifies that the winnings are in relation to all gambling activities under the Betting, Lotteries and Gaming Act and that these are in relation to the payouts made to players/punters. KRA has previously lost in the TAT and in the High Court where it has been determined that winnings do not include amounts staked. Refer to: <u><i>The Commissioner of Domestic Taxes v Pevans East Africa Limited &amp; 6 others.</i></u></p> <p>Taxation of the digital economy continues to grow in Kenya with the inclusion of a definition of digital content monetisation in order to broaden the tax base.</p>

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 2	<p>(d) subscription services where the audience pays a periodic fee to access the content and support the content creator;</p> <p>(e) offering for use a logo, brand or catchphrase associated with the content creator merchandise sales eBooks, course or software;</p> <p>(f) membership programmes for exclusive content including early access;</p> <p>(g) licensing the content including photographs, music or other businesses or individuals for use in the user's own projects; or</p> <p>(h) a content creator earns a commission or fees from crowd funding.</p>	<p>This definition forms the basis for the introduction of withholding tax on services provided by content creators at 5% for residents and 20% for non-residents without a Permanent Establishment in Kenya.</p>

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 2	<p><b>b.</b> Introduction of a new definitions:</p> <p>“immovable property” includes—</p> <p>(a) land, whether covered by water or not, any estate, rights, interest or easement in or over any land and things attached to the earth or permanently fastened to anything attached to the earth, and includes a debt secured by mortgage or charge on immovable property; and</p> <p>(b) a mining right, an interest in a petroleum agreement, mining information or petroleum information;</p> <p>“related person” means, in the case of two persons where a person who participates directly or indirectly in the management, control or capital of the business of another person.</p>	<p>Introduction of the definition of immovable property under Section 2. This provides clarity on what is immovable property as applied throughout the Income Tax Act. Currently, the definition is provided for in the context of taxation of extractive industries under Section 3. This has been deleted and introduced under Section 2 with clarity.</p> <p>Further, the new definition is in line with proposed changes under the Eighth Schedule with regards to taxation of capital gains including indirect disposal of shares.</p> <p>The intention of this could be to clarify who an individual is in relation to a person under related party transactions.</p>
Section 3(3)	Section 3(3) of the Income Tax Act is amended in paragraph (c) by deleting subparagraph (i).	The proposal is for the definition of immovable property to be deleted under subsection 3 and introduced under Section 2. Section 3(3)(i) “immovable property” means mining right, an interest in a petroleum agreement, mining information or petroleum agreement, mining information or petroleum information.

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 4A	<p>Section 4A of the Income Tax Act is amended—</p> <p>(a) by deleting of paragraph (ii) of the proviso to subsection (1) and substituting therefor the following new paragraph—</p> <p>(ii) the foreign exchange loss shall be deferred (and not taken into account) and claimed over a period of not more than five years from the date the loss was realized by a person whose gross interest paid or payable to a non-resident person exceeds thirty per cent of the person's earnings before interest, taxes, depreciation and amortization in any year of income;</p> <p>(b) by deleting subsection (1A).</p> <p><del>(1A) For the avoidance of doubt, accumulated losses shall be taken into account in computing the amount of revenue reserves.</del></p>	<p>The Finance Act has amended the period of claiming the forex losses to five years from the initial proposal of three years as per the Finance Bill. While this will offer some reprieve, it is still an unfavourable position as the previous period was indefinite.</p> <p>The deletion of 1A is a clean up as it is no longer relevant following the switch from thin capitalisation rules to the EBITDA approach.</p>

Provision in the Legislation	Amendment	Points to Note
Section 5(2)	<p>Section 5 of the Income Tax Act is amended—</p> <p>(a) In subsection (2), —</p> <p>(i) by inserting the following new subparagraph in paragraph (a) immediately after sub paragraph (iii)—</p> <p>(iv) notwithstanding the provisions of subparagraph (ii), where such an amount is received by an employee as payment of travelling allowance to perform official duties, the standard mileage rate approved by the Automobile Association of Kenya shall be deemed to be reimbursement of the amount so expended and shall be excluded in the calculation of the employee's gains and profits:</p> <p>(ii) by inserting the following new paragraph immediately after paragraph(f) —</p> <p>(fa) club entrance and subscription fees allowed against the employer's income.</p>	<p>Where reimbursement to an employee is in relation to travelling expenses and the same is calculated based on the Automobile Association of Kenya rates, the same will be excluded in determining an employee's gains and profits. This is a good step towards standardising the treatment of mileage claims.</p> <p>The club entrance and subscription fees will be taxed on the employee but allowed as a deduction on the employer.</p>



Provision in the Legislation	Amendment	Points to Note
Section 5(6)	<p>(c) In subsection (6)(c)—</p> <p>(i) by deleting the words “shares were granted by the employer” appearing in subparagraph (i) and substituting therefor the words “option was exercised by the employee”;</p> <p>(ii) by deleting the words “which shall be agreed upon with the Commissioner before the grant of the options” appearing in subparagraph (ii) and substituting therefor the words “when the option is exercised”;</p>	<p>The changes are with respect to the definition of market value. The changes are in line with changes made through the Finance Act, 2022 and place emphasis on the exercising of the option by the employee.</p>

Provision in the Legislation	Amendment	Points to Note
Section 5(7)	<p>Section 5 of the Income Tax Act is amended—</p> <p>(c) by inserting the following new subsections immediately after subsection (6)—</p> <p>(7) Where an employee is offered company shares in lieu of cash emoluments by an eligible start-up, the taxation of the benefit from the shares allocated to that person by virtue of employment shall be deferred and taxed within thirty days of the earlier of—</p> <p>(a) the expiry of five years from the end of the year of the award of the shares;</p> <p>(b) the disposal of the shares by the employee; or</p> <p>(c) the date the employee ceases to be an employee of the eligible start-up:</p> <p>Provided that—</p> <p>(i) this subsection shall not apply to any cash emoluments or other benefits in kind offered to an employee by virtue of the employment;</p>	<p>This is a new provision which appears to be aimed at encouraging startups which might be cash strained but can offer shares to employees. The employees are taxed at a later date as specified in the proposed amendment.</p> <p><b>Effective date 1 January 2024.</b></p>

Provision in the Legislation	Amendment	Points to Note
Section 5(7)	<p>(ii) the benefit shall be deemed to accrue at the earlier of the occurrence of the events contemplated in paragraphs (a), (b) or (c);</p> <p>(iii) the value of the taxable benefit shall be the fair market value of the shares at the earlier of the occurrence of the events contemplated in paragraphs (a), (b) or (c); or</p> <p>(iv) where the fair market value is not available, the Commissioner shall determine the value of the shares based on the last issued financial statements.</p> <p>(8) For the purposes of subsection (7), “eligible start-up company” means a business incorporated in Kenya that—</p> <p>(a) has an annual turnover of not more than one hundred million shillings;</p> <p>(b) does not carry on management, professional or training business;</p> <p>(c) has not been formed as a result of splitting or restructuring of an existing entity; and</p> <p>(d) has been in existence for a period of not more than five years.</p>	<p>This amendment is meant to provide a clear definition of eligible start-up company, as introduced in Section 7.</p>

Provision in the Legislation	Amendment	Points to Note
Section 7B	<p>The Income Tax Act is amended by inserting the following new section immediately after section 7A—</p> <p>7B. (1) A non-resident person who carries on business in Kenya through a permanent establishment shall pay tax on repatriated income for the year of income.</p> <p>(2) The repatriated income under subsection (1) shall be computed using the following formula—</p> $R = A_1 + (P - T) - A_2$ <p>Where—</p> <p><b>R</b> is the repatriated profit;</p> <p><b>A<sub>1</sub></b> is the net assets at the beginning of the year;</p> <p><b>P</b> is the net profit for the year of income calculated in accordance with generally accepted accounting principles;</p> <p><b>T</b> is the tax payable on the chargeable income; and</p> <p><b>A<sub>2</sub></b> is the net assets at the end of the year.</p> <p>(3) The tax imposed under this section shall be in addition to tax chargeable on the income of the permanent establishment under section 4.</p> <p>(4) For the purposes this section, “net assets” means the total book value of assets less total liabilities for the year of income and shall not include revaluation of assets.</p>	<p>This provision seeks to create harmonization between the taxation of subsidiaries and permanent establishments from an effective tax rate perspective. The amendment in the Third Schedule has provided for the rate of repatriated income to be 15%.</p> <p><b>Effective date 1 January 2024.</b></p>

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 10	<p>Section 10 of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (2)—</p> <p>(3) Where a payment has been made to a non-resident person, withholding tax paid thereon shall not be refundable or available for deduction against the income where an audit adjustment has been made in respect of such payment.</p>	<p>This is an entirely new provision that seeks to disallow refunds or deductions of withholding taxes remitted to the Commissioner in relation to management, or professional fees, royalties, interest, and rents paid to a non-resident person.</p> <p>As such, any tax audit that results in an audit adjustment after a resident person has made excessive payments to a non-resident person, the non-resident person will not be allowed to claim a refund of the withholding tax deducted on such excess payments.</p> <p>However, the term "audit adjustment" has not been defined in the Act.</p>



# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 11	Section 11 of the Income Tax Act is amended by deleting subsection (3A).	<p>Subsection 3A was introduced in July 2021, to restrict income tax being imposed on:</p> <p>(a) any amount that is paid out of the trust income on behalf of any beneficiary and is used exclusively for the purpose of education, medical treatment or early adulthood housing;</p> <p>(b) Income paid to any beneficiary which is collectively below ten million shillings in the year of income;</p> <p>This ultimately reduced tax collections on payments by trusts to beneficiaries.</p> <p>The Finance Bill 2023, sought to delete the entire provision, however, the proposal did not pass.</p> <p>The amendment seeks to do away with the rules contained in the provisions. Therefore, adverse tax implications may result for persons who structured trusts with the current provisions in mind.</p>

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 12C	Section 12C of the Income Tax Act is amended in subsection (1), by deleting the words “but does not exceed or is expected to exceed fifty million shillings” and substituting therefor the following words “but does not exceed twenty-five million shillings”.	<p>This amendment is expected to target the ‘hard to tax’ informal sector tax which has been expanding, whereas its contribution to revenues remains low.</p> <p>Also, the amendment seeks to reduce the upper limit from KShs.50 Million to KSh.25 Million.</p> <p>The Third Schedule proposes that turnover tax shall be three percent of the gross receipts of the business of a taxable person.</p>

Provision in the Legislation	Amendment	Points to Note
Section 12F	<p>The Income Tax Act is amended by inserting the following new section immediately after Section 12E—</p> <p>12F. (1) Notwithstanding any other provision of this Act, a tax to be known as digital asset tax shall be payable by a person on income derived from the transfer or exchange of digital assets.</p> <p>(2) The owner of a platform or the person who facilitates the exchange or transfer of a digital asset shall deduct the digital asset tax and remit it to the Commissioner.</p> <p>(3) A non-resident person who owns a platform on which digital assets are exchanged or transferred shall register under the simplified tax regime.</p> <p>(4) A person who is required to deduct the digital asset tax shall, within five working days after making the deduction, remit the amount so deducted to the Commissioner together with a return of the amount of the payment, the amount of tax deducted, and such other information as the Commissioner may require.</p>	<p>The amendment seeks to introduce an income tax referred to as the “Digital Asset Tax” on digital assets which have been defined to include anything of value that is not tangible such as cryptocurrencies, token codes and Non-Fungible Tokens (NFTs).</p> <p>The Digital Asset Tax is intended to be payable at the rate of 3% of the transfer or exchange value by the person deriving the income at the gross fair market value consideration received.</p> <p>Also, the owner of a platform or the person who facilitates the exchange or transfer of a digital asset shall deduct the digital asset tax and remit it to the Commissioner, within twenty-four hours after making the deduction.</p> <p><b>Effective date 1 September 2023.</b></p>

Provision in the Legislation	Amendment	Points to Note
Section 12F	<p>(5) For the purposes of this section —</p> <p>(a) “digital asset” includes —</p> <p>(i) anything of value that is not tangible and cryptocurrencies, token code, number held in digital form and generated through cryptographic means or otherwise, by whatever name called, providing a digital representation of value exchanged with or without consideration that can be transferred, stored or exchanged electronically; and</p> <p>ii) a non-fungible token or any other token of similar nature, by whatever name called; and</p> <p>(b) “income derived from transfer or exchange of a digital asset” means the gross fair market value consideration received or receivable at the point of exchange or transfer of a digital asset.</p>	<p>Further, this amendment targets non-resident persons who own a platform on which digital assets are exchanged or transferred and they shall be required to register under the simplified tax regime.</p> <p>This amendment appears to be geared towards the growth in the use of digital assets in the country.</p> <p>Kenya is among top dealers in peer-to-peer cryptocurrency platforms, which allow traders to transact directly with one another without the need for a centralized third party to facilitate the transactions.</p>

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 15(2)(g)	Section 15 of the Income Tax Act is amended—  (a) in subsection (2), by deleting paragraph (g) and substituting therefor the following new paragraph—	The new paragraph is omitted from the published Act. This may be a clerical error.



# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 15(3)(b)	Section 15 of the Income Tax Act is amended—  (b) in subsection (3), by deleting the word “five” appearing in paragraph (b) and substituting therefor the word “six”;	The Finance Act seems to amend a section that is not in existence at present. This appears to be an error.
Section 15 (7) (e) (iii)	(c) In subsection (7)(e), by deleting item (iii).	This amendment seeks to clean up the provisions related to wife's employment income. The sections relating to wife's employment income are not relevant in the Income Tax Act.

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 16(1)	<p>Section 16 of the Income Tax is amended—</p> <p>(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (b)—</p> <p>(c) any expenditure or loss where the invoices of the transactions are not generated from an electronic tax invoice management system except where the transactions have been exempted in accordance with the Tax Procedures Act, 2015.</p>	<p>Costs incurred or purchases made from VAT non-compliant or non-VAT-registered persons will not be allowable expenses, except as provided for in the Tax Procedures Act (TPA).</p> <p>Associated TPA amendment (4) - The electronic tax invoice referred to in subsection (3) excludes emoluments, imports, investment allowances, interest, and similar payments.</p> <p><b>Effective date 1 January 2024.</b></p>
Section 16(2)(a)(v)	<p>(b) In subsection (2) —</p> <p>(i) in paragraph (a), by deleting subparagraph (v).</p>	<p>These expenses would be allowable.</p> <p>When read with the Section 5 amendment, this implies that these expenses will be allowable if taxed on the employee receiving the benefit.</p> <p><b>Effective date 1 January 2024.</b></p>
Section 16(2)(j)	<p>(ii) in paragraph (j) by deleting the words “related persons and third parties” appearing in the opening words and substituting therefor the words “a non-resident”;</p>	<p>Only borrowings from non-residents will be restricted.</p> <p>Intended to encourage foreign investment via equity instead of debt.</p> <p><b>Effective date 1 January 2024.</b></p>

Provision in the Legislation	Amendment	Points to Note
Section 16(2)(j) (iii)	<p>(b) in subsection (2)—</p> <p>(iii) in paragraph (iii) of the proviso to paragraph (j)—</p> <p>A) by deleting item G;</p> <p>B) by deleting item H;</p>	<p>Following this amendment, item G and H will not be included in the exemption provided for in paragraph iii.</p> <p>(G) refers to companies engaged in manufacturing whose cumulative investment in the preceding five years from the commencement of this provision is at least five billion shillings;</p> <p>(H) refers to companies engaged in manufacturing whose cumulative investment is at least five billion shillings.</p> <p><b>Effective date 1 January 2024.</b></p>

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 16(2)(j)	<p>(iv) by inserting the following new paragraphs at the end of the proviso to paragraph (j)—</p> <p>(iv) any interest in excess of thirty per cent of earnings before interest, taxes, depreciation and amortization shall be an allowable deduction in ascertaining the total income of a person in the subsequent three years of income to the extent that the deduction of interest on loans from non-resident persons does not exceed the thirty percent threshold provided under this section; and</p> <p>(v) this provision shall not apply where the interest is exempt from tax under this Act.</p>	<p>Allowance to carry forward the interest deduction up to a maximum of three years in alignment with the OECD approach.</p> <p>No provision to allow for an application for the extension of this timeline.</p> <p>Order of utilisation not indicated.</p> <p><b>Effective date 1 January 2024.</b></p>
Section 16(3)	<p>Section 16 of the Income Tax Act is amended—</p> <p>(c) in the definition of “all loans” appearing in subsection (3), by inserting the words “but shall not include local loans” immediately after the word “premium”.</p>	<p>This amendment seeks to clarify the meaning of the term all loans to not include local loans.</p> <p><b>Effective date 1 January 2024.</b></p>

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 18(4)	Section 18 of the Income Tax Act is amended by deleting subsection (4).	<p>Expenses incurred outside Kenya by non-residents would be allowable, e.g., non-resident director remuneration especially where PAYE is paid on the same.</p> <p>This is, perhaps, intended to enhance equality of taxpayers.</p>



Provision in the Legislation	Amendment	Points to Note
Section 18A	<p>Section 18A of the Income Tax Act is amended by inserting the following new subsection immediately after subsection (3)—</p> <p>(4) For the purposes of this section, <b>qualifying intellectual property income</b> that subject to the <b>preferential tax rate</b> shall be determined using the following formula—</p> $I = \left( \frac{Q}{T} \right) \times P$ <p>Where—</p> <p>I is income receiving tax benefits;</p> <p>Q is the research and development expenditures made by the taxpayer, excluding acquisition costs and related party outsourcing costs;</p> <p>T is the research and development expenditures made by the taxpayer, including acquisition costs and related party outsourcing costs; and</p> <p>P is intellectual property income including <b>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:</b></p> <p>Provided that for the purposes of this subsection <b>intellectual property losses shall only be deducted against intellectual property income.</b></p>	<p>No definition or conditions provided for Qualifying Intellectual Property (“QIP”).</p> <p>QIP defined in other jurisdiction as: patents, registered designs, copyright, design rights and plant breeders' rights, but excludes Marketing related IP such as trademarks.</p> <p>Introduced in line with OECD nexus approach based on a substantial activity requirement. Intended to directly tie the income receiving benefits and the activity contributing to that income.</p> <p>However, as Kenya does not have a reduced tax rate for IP or an IP regime, the proposed provision is unlikely to have an impact on IP taxation.</p> <p><b>Effective date 1 January 2024.</b></p>

Provision in the Legislation	Amendment	Points to Note
Section 18D(1)	<p>Section 18D of the Income Tax Act is amended—</p> <p>(a) by deleting subsection (1) and substituting therefor the following new subsection—</p> <p>(1) Each ultimate parent entity that is resident in Kenya shall file a country-by-country report with the Commissioner in accordance with subsection (3).</p>	<p>The current documentation requirements lack clarity on the applicability of the Country by Country (CbC) report, Master file and Local file.</p> <p>The new provisions are intended to provide clarity in respect to this and align with the OECD implementation of the three-tiered approach.</p>

Provision in the Legislation	Amendment	Points to Note
Section 18D	<p>(iii) by inserting the following new subsections immediately after subsection (1)—</p> <p>(1A) A constituent entity that is resident in Kenya shall file a country-by-country report with the Commissioner in accordance with subsection (1B), if one of the following conditions applies—</p> <p>(a) the ultimate parent entity is not obligated to file a country-by-country report in its jurisdiction of tax residence;</p> <p>(b) the jurisdiction in which the ultimate parent entity is resident has a current international tax agreement which Kenya is a party to but does not have a competent authority agreement with Kenya at the time of filing the country-by-country report for the reporting financial year; or</p> <p>(c) there has been a systemic failure of the jurisdiction of tax residence of the ultimate parent entity that has been notified by the Commissioner to the constituent entity resident in Kenya.</p> <p>(1B) The provisions of subsections (1) and (1A) 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.</p>	<ul style="list-style-type: none"> <li>Clarifies that the threshold requirement will only apply for purposes of the CBC report requirement.</li> <li>This amendment would ensure that the constituent entity resident in Kenya can be held responsible for submitting the country-by-country report should either of the 3 conditions apply</li> </ul>

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 18D(2)	Section 18D of the Income Tax Act is amended—  (c) in subsection (2) by inserting the words “or a constituent entity” immediately after the words “parent entity”;	
Section 18D(3)	(d) In subsection (3), by deleting the words “In addition to the provisions in subsection (1)”;	Clarifies that there are no threshold requirements for the master file and local file requirement.
Section 18F	Section 18F of the Income Tax Act is amended by deleting the definition of “ultimate parent entity” and substituting therefor the following new definition—  “ultimate parent entity” means an entity which—  (a) is not controlled by another entity; and  (b) owns or controls, directly or indirectly, one or more constituent entities of a multinational enterprise group.	Removal of the provision that the UPE be resident in Kenya.

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 21(1)	<p>Section 21 of the Income Tax Act is amended—</p> <p>(a) by deleting subsection (1) and substituting therefor the following new subsection—</p> <p>(1) A body of persons which carries on the activities of a members' club or trade association shall be deemed to be carrying on a business and the gross receipts on revenue account (excluding joining fees, welfare contributions and subscriptions) shall be deemed to be income from a business.</p>	The amendment seeks to clarify the taxation of members' club or trade association to include all receipt excluding joining fees, welfare contributions and subscriptions without limiting source of that revenue.
Section 21(2)	<p>(b) by deleting subsection (2).</p>	Clean up inconsistency as Section 21(1) specifies the income chargeable to tax for members' club or trade association.



# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 31(1)(b)	Section 31 of the Income Tax Act is amended in subsection (1)—  (a) by deleting the word “his” appearing in paragraph (b) and substituting therefor the words “the individual’s”;	By deleting the word his and replacing it with an individual the amendment provides clarity as the word individual is defined as a natural person therefore eliminating gender bias and offering a clear reference to the other provisions of pension.
Section 31(1)(c)	(b) deleting the words “he, as well as his employer” appearing in paragraph (c) and substituting therefor the words “the individual and the individual’s employer”.	By deleting the word his and replacing it with an individual the amendment aims to align the terms under the provisions on pensions to eliminate any inconsistencies in the wording.
Section 31A	The Income Tax Act is amended by inserting the following new section immediately after section 31 –  31A. A resident individual who proves that in a year of income the person has contributed to a post-retirement medical fund shall for that year of income be entitled to a personal relief in this Act referred to as the post-retirement medical fund relief.	This provision introduces a new relief to be known as the post-retirement medical fund relief. This is aimed at encouraging those that are retired to take up medical cover for their post-retirement years by providing tax relief for remittances paid to us medical fund.  <b>Effective date 1 January 2024.</b>

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 35(1)(q)	<p>Section 35 of the Income Tax Act is amended—</p> <p>(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (p) -</p> <p>(q) digital content monetization;</p>	The Finance Act, 2023 requires the withholding of tax from payments made to non-residents in respect of digital content monetisation.
Section 35(3)(k)	<p>(b) in subsection (3), by inserting the following paragraphs immediately after paragraph (j) -</p> <p>(k) sales promotion, marketing and advertising services; and</p>	This provision seeks to widen the scope of withholding tax and reduce tax leakage in the marketing and promotion industry by introducing 5% withholding tax in respect of sales promotion, marketing and advertising services provided to residents.
Section 35(3)(l)	(l) digital content monetisation.	The provision seeks to widen the scope of withholding tax by introducing 5% withholding tax in respect of digital content monetisation provided to residents.
Section 35(3AA)	<p>(c) by inserting the following new subsections immediately after subsection (3A)—</p> <p>(3AA) A person who receives rental income on behalf of the owner of the premises shall deduct tax therefrom:</p> <p>Provided that only a person appointed by the Commissioner in writing for that purpose may deduct tax under this section.</p>	In a bid to improve rental income tax compliance, the Government is placing the burden on agents who collect rent on behalf of landlords. Such agents must however, first be appointed by the Commissioner prior to having the burden of deduction of tax from the rental income generated.

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 35(3AB)	(3AB) A person who deducts rental income tax under this section shall, within five working days after the deduction was made, remit the amount so deducted to the Commissioner together with a return in writing of the tax deducted and such other information as the Commissioner may require.	This is to ensure that tax is paid at the earliest time possible upon receipt of the rental income. This is aimed at improving rental income tax compliance as well as improving the Government's cashflows.
Section 35(3AC)	(3AC) The Commissioner shall, upon receipt of the amount remitted under subsection (3AB), furnish the person from whom the rental income tax was withheld with a certificate stating the amount of the rent and tax deducted therefrom.	This is aimed at improving compliance.
Section 35(5)	(d) in subsection (5), by deleting the words "on or before the twentieth day of the month following the month in which" and substituting therefor the words "within five working days after".	<p>This requirement will now apply to all forms of withholding tax including payments on account of interest , dividends, management and professional fees amongst others.</p> <p>This measure increases the burden of compliance on taxpayers who are now required to spend a lot more time administering their tax affairs. This change is aimed at improving the Government's cashflows.</p>

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Section 45	The Income Tax Act is amended by repealing section 45.	This provision required the income of a married woman living with her husband to be accounted for and assessed on her husband. This provision has long been overtaken by events and the amendment is therefore intended to bring the law up to current day society where all individuals generating taxable income are required to account for their taxes independently.
Section 133(6)	The Income Tax Act is amended in section 133(6), by deleting the expression “31 <sup>st</sup> December 2023” and substituting therefor the expression “31 <sup>st</sup> December 2024.”	<p>This amendment extends the capital allowance period under Section 24E of the Repealed Second Schedule which was set to expire on 31 December 2023.</p> <p>This capital allowance under the repealed schedule had a transition period and relates to capital expenditure of at least KShs.5 Billion incurred on the construction of bulk storage and handling facilities for supporting the standard gauge railway operations of a minimum storage of one hundred thousand metric tonnes of supplies.</p>

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
First Schedule (Paragraph 10)	<p>The First Schedule to the Income Tax is amended—</p> <p>(a) by inserting the following new proviso immediately after the proviso to paragraph 10—</p> <p>Provided further that in this paragraph, “institution, body of persons or irrevocable trust, of a public character” means an entity established to benefit the public in a transparent and accountable manner without restriction or discrimination regardless of the level of charges or fees levied for services rendered, and which utilises its assets or income exclusively to carry out the purpose for which the entity was established without conferring a private benefit to an individual.</p>	<p>This newly introduced proviso defines what the Revenue Authority would consider as an entity that is of a public character. Lack of a definition in the past has led to many instances of conflict between taxpayers and the Revenue Authority on the nature of charitable activities that should qualify for income tax exemption under Paragraph 10 of the First Schedule to the Income Tax Act. This definition should begin to create alignment on what qualifies and what does not.</p>

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
First Schedule Paragraph 65	(b) by deleting paragraph 65;	Going forward, the income of a company undertaking the manufacture of human vaccines will be subject to income tax.
First Schedule Paragraphs 68 - 73	<p>(c) by inserting the following new paragraphs immediately after paragraph 67—</p> <p>68. Royalties paid to a non-resident person by a company undertaking the manufacture of human vaccines.</p> <p>69. Interest paid to a resident person or non-resident person by a company undertaking the manufacture of human vaccines.</p> <p>70. Investment income from a post-retirement medical fund, whether or not the fund is part of a retirement benefits scheme.</p> <p>71. 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:</p> <p>Provided that the non-resident is in Kenya solely for the implementation of the project financed by the one hundred percent grant.</p> <p>72. Gains on transfer of property within a special economic zone enterprise, developer and operator.</p> <p>73. Royalties, interest, management fees, professional fees, training fees, consultancy fee, agency or contractual fees paid by a special economic zone developer, operator or enterprise, in the first ten years of its establishment, to a non-resident person.</p>	<p>Royalties paid to a non-resident person by a company undertaking the manufacture of human vaccines will not be subject to income tax.</p> <p>Interest paid to a resident person or non-resident person by a company undertaking the manufacture of human vaccines will not be subject to income tax.</p> <p>Investment income from a post-retirement medical fund, whether or not the fund is part of a retirement benefits scheme will not be subject to income tax.</p> <p>Income earned by non-resident persons engaged in Government projects on the terms set out will not be subject to income tax.</p> <p>The gains earned on transfer of property within an SEZ will not be subject to income tax.</p> <p>Royalties, interest, management fees, professional fees, training fees, consultancy fee, agency or contractual fees paid by an SEZ licensed entity to a non-resident person will not suffer income tax.</p>

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Second Schedule Paragraph 1(1)(a)	<p>The Second Schedule to the Income Tax Act is amended—</p> <p>(a) in paragraph 1 (1) (a) by inserting the following new items immediately after item (vii) –</p> <p>(viii) Industrial Building 10%</p> <p>(ix) Dock 10% in equal instalments</p>	<p>A taxpayer can claim investment allowance on industrial buildings and docks at the rate of 10%.</p> <p>The new provision on industrial building states 10% but omits that this deduction should be taken in equal instalments of 10% each.</p> <p><b>Effective date 1 January 2024.</b></p>
Second Schedule Paragraph 1(1)(a) Proviso	<p>(b) in the proviso to paragraph 1—</p> <p>(i) in the definition of “civil works”, by inserting the following new item immediately after item (v)—</p> <p>(vi) earthworks for telecommunication equipment and construction works undertaken in connection with the installation and maintenance of telecommunication equipment and related structures.</p>	<p>There is a new inclusion in the definition of civil works.</p> <p><b>Effective date 1 January 2024.</b></p>
Second Schedule Paragraph 1(1)(f)	<p>In paragraph (f), by inserting the words “refining or” immediately after the words “means the” appearing in the definition of “manufacture”;</p>	<p>This amendment is intended to offer more clarity to the definition of manufacture within the context of the Second Schedule.</p> <p><b>Effective date 1 January 2024.</b></p>

Provision in the Legislation	Amendment	Points to Note
Second Schedule Paragraph 1(1)(i) – (l)	<p>(ii) by inserting the following new paragraphs immediately after paragraph (h)—</p> <p>(i) “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;</p> <p>(j) “industrial building” includes a building in use for the purpose of transport, bridge, tunnel, inland navigation water and electricity or hydraulic power undertaking;</p> <p>(k) “machinery used for agriculture” means machinery used directly in agricultural activities including tilling, planting, irrigation, weeding and harvesting;</p> <p>(l) “telecommunications equipment” includes civil works deemed as part of the telecommunication equipment or civil works that contribute to the use of the telecommunication equipment.</p>	<p>Insertion of new definitions of dock, industrial building, machinery used for agriculture and telecommunication equipment.</p> <p><b>Effective date 1 January 2024.</b></p>



Provision in the Legislation	Amendment	Points to Note
Second Schedule Paragraph 1B	<p>(c) by inserting the following new paragraph immediately after paragraph (1A)—</p> <p>(1B) Paragraph (1A) shall apply to items listed under paragraphs 1(1)(a)(i) and (ii), and (1)(b)(i).</p>	<p>The investment allowance of 100% shall only be accorded to hotel buildings and machinery used for manufacture.</p> <p><b>Effective date 1 January 2024.</b></p>

Provision in the Legislation	Amendment	Points to Note												
Third Schedule Head A Paragraph 4	<p>The Third Schedule to the Income Tax Act is amended—</p> <p>(a) in Head A, by inserting the following new paragraph immediately after paragraph 3—</p> <p>4. Post-retirement medical fund relief</p> <p>The amount of post-retirement medical fund relief shall be fifteen per cent of the amount of contribution paid or sixty thousand shillings per annum, whichever is lower.</p>	<p>Provision of personal relief for post-retirement medical fund at 15% of the amount of contribution paid or KShs.60,000 per annum, whichever is lower.</p> <p><b>Effective date 1 January 2024.</b></p>												
Third Schedule Head B Paragraph 1	<p>(b) in Head B—</p> <p>(i) by deleting paragraph 1 and substituting therefor the following new paragraph—</p> <p>1.The individual rates of tax shall be—</p> <table><tr><td></td><td><i>Rate in each shilling</i></td></tr><tr><td>On the first Ksh. 288,000</td><td>10%</td></tr><tr><td>On the next Ksh. 100,000</td><td>25%</td></tr><tr><td>On the next Ksh. 5,612,000</td><td>30%</td></tr><tr><td>On the next Ksh.3,600,000</td><td>32.5%</td></tr><tr><td>On all income over Ksh. 9,600,000</td><td>35%</td></tr></table>		<i>Rate in each shilling</i>	On the first Ksh. 288,000	10%	On the next Ksh. 100,000	25%	On the next Ksh. 5,612,000	30%	On the next Ksh.3,600,000	32.5%	On all income over Ksh. 9,600,000	35%	<p>Individuals earning KShs.800,000 monthly (equivalent to KShs.9,600,000 per year) will pay PAYE at the rate of 35%.</p>
	<i>Rate in each shilling</i>													
On the first Ksh. 288,000	10%													
On the next Ksh. 100,000	25%													
On the next Ksh. 5,612,000	30%													
On the next Ksh.3,600,000	32.5%													
On all income over Ksh. 9,600,000	35%													

Provision in the Legislation	Amendment	Points to Note
Third Schedule Head B Paragraph 1A	(ii) by deleting paragraph 1A;	The wife’s employment, wife’s professional and wife’s self-employment income rates of tax have been deleted.
Third Schedule Head B Paragraph 2(b)(viii)	<div>(iii) in paragraph 2(b), by inserting the following new item immediately after item (vii)—  <div>(viii) for the year of income 2024 and each subsequent year of income</div><div><i>Rate in each twenty shillings</i> 6.00</div></div>	<div>A branch will be taxed at the rate of 30%.</div> <div><b>Effective date 1 January 2024.</b></div>

Provision in the Legislation	Amendment	Points to Note
Third Schedule Head B Paragraph 2(j)	<p>(iv) by deleting the proviso to paragraph 2(j) and substituting therefor the following new proviso-</p> <p>Provided that—</p> <p>(i) the rate of fifteen per cent shall be extended for a further period of five years if the company achieves a local content equivalent to fifty per cent of the ex-factory value of the motor vehicles; and</p> <p>(ii) in this paragraph, “local content” means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.</p>	<p>The proviso has outlined new conditions required for the corporate tax rate of 15% applicable to local motor vehicle assemblers to be extended for a further period of 5 years.</p> <p>The mandate that local content has to be manufactured in Kenya is an incentive to promote the growth of the manufacturing sector in Kenya.</p>

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Third Schedule Head B Paragraph 2(p)	(v) by inserting the following new subparagraph immediately after subparagraph 2(o)—  (p) in respect of a company undertaking the manufacture of human vaccines, ten per cent.	The income of a company undertaking the manufacture of human vaccines will be subject to tax at the rate of 10%.  <b>Effective date 1 January 2024.</b>
Third Schedule Head B Paragraph 3(s) and (t)	(vi) In paragraph 3, by inserting the following new item immediately after item (r) –  (s) in the case of repatriated income under section 7B, fifteen per cent;  (t) in the case of digital content monetisation, twenty percent of the gross amount;	The non-resident WHT in the case of repatriated income under Section 7B will be 15%.  The non-resident WHT in the case of digital monetisation will be 20%.
Third Schedule Head B Paragraph 5(ja)	(vii) in paragraph 5(ja), by deleting the word “ten” and substituting therefor the word “seven point five”;	The withholding tax in respect of a rent, premium or similar consideration for the use or occupation of immovable property has been reduced from 10% to 7.5%.  <b>Effective date 1 January 2024.</b>

Provision in the Legislation	Amendment	Points to Note
Third Schedule Head B Paragraph 5(l) and (m)	<p>(viii) in paragraph 5, by inserting the following new subparagraph immediately after subparagraphs (k)—</p> <p>(l) in respect of payments for sales promotion, marketing, advertising services, five per cent of the gross amount; and</p> <p>(m) in respect of payments relating to digital content monetisation, five per cent.</p>	<p>A withholding tax of 5% has been introduced in respect of payments made to residents for sales promotion, marketing, advertising services, the aggregate value of which is twenty-four thousand shillings in a month or more.</p> <p>A withholding tax of 5% has been introduced in respect of resident payments relating to digital content monetisation.</p>
Third Schedule Head B Paragraph 8(a)	<p>(ix) in paragraph 8, by deleting subparagraph (a) and substituting therefor the following new subparagraph—</p> <p>(a) for vans, pick-ups, trucks, prime movers, trailers and lorries, two thousand five hundred shillings per tonne of load capacity per year or five thousand shillings per year, whichever is higher;</p> <p>Provided that advance tax shall not be imposed on the tractors or trailers used for agricultural purposes.</p>	<p>The advance tax has been increased from one thousand five hundred shillings per tonne of load capacity to two thousand five hundred shillings per tonne or from two thousand shillings per year to five thousand shillings per year, whichever is higher.</p> <p><b>Effective date 1 January 2024.</b></p>

Provision in the Legislation	Amendment	Points to Note
Third Schedule Head B Paragraph 8(b)	(x) in paragraph 8, by deleting subparagraph (b) and substituting therefor the following new subparagraph—  (b) for saloons, station-wagons, mini-buses, buses and coaches, one hundred shillings per passenger capacity per month or five thousand shillings per year, whichever is higher.	The advance tax has been increased from sixty shillings per passenger capacity to one hundred shillings or two thousand four hundred shillings per year to five thousand shillings per year, whichever is higher.  <b>Effective date 1 January 2024.</b>
Third Schedule Head B Paragraph 9	(xi) in paragraph 9, by deleting the word “one” and substituting therefor the word “three”;	The rate of turnover tax has been increased from one percent to three percent.  <b>Effective date 1 January 2024.</b>
Third Schedule Head B Paragraph 10	(xii) in paragraph 10, by deleting the word “ten” and substituting therefor the word “seven point five”;	The rate of tax in respect of residential rental income has been reduced from 10% to 7.5%.  The reduction is to act as an incentive for taxpayers to declare their rental income.

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Third Schedule Head B Paragraph 12	(xiii) by inserting the following new paragraph immediately after paragraph 12—  13. The rate of tax in respect of digital asset tax shall be three per cent of the transfer or exchange value of the digital asset.	There is an introduction of the rate of tax of digital asset tax which shall be 3% of the transfer or exchange value of the digital asset.  <b>Effective date 1 September 2023.</b>
Fourth Schedule	The Fourth Schedule to the Income Tax Act is amended by inserting the following paragraph at the end thereof—  Mortgage refinance companies licensed under the Central Bank of Kenya Act.	Mortgage refinance companies licensed under the Central Bank of Kenya Act will from the effective date fall within the scope of a financial institution.  <b>Effective date 1 January 2024.</b>



Provision in the Legislation	Amendment	Points to Note
Eighth Schedule Paragraph 2	<p>The Eighth Schedule to the Income Tax Act is amended—</p> <p>(a) by deleting paragraph 2 and substituting therefor the following new paragraph—</p> <p><b>2. Taxation of gains</b></p> <p>Subject to this Schedule, income in respect of which tax is chargeable under section 3(2)(f) is—</p> <p>a. the whole of the gains which accrued to a company, an individual or partnership on or after the 1st January, 2015, on the transfer of property situated in Kenya, whether or not the property was acquired before 1st January, 2015, or</p> <p>b. 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 twenty per cent of their value directly or indirectly from immovable property situated in Kenya, or</p> <p>c. gains, other than those to which subparagraph (a) applies, derived from the alienation of shares of a company resident in Kenya if the alienator, at any time during the three hundred and sixty-five days preceding such alienation, held directly or indirectly at least twenty per cent of the capital of that company:</p> <p>Provided that for the purposes of this paragraph, the person alienating the shares shall notify the Commissioner in writing where there is a change of at least twenty per cent in the underlying ownership of the property.</p>	<p>The gain made by a partnership on or after 1 January 2015 on transfer of property situated in Kenya will be subject to Capital Gains Tax (CGT) whether or not the property was acquired before 1st January, 2015.</p> <p>The gain on disposal of shares or comparable interests of companies, partnerships and trusts, whether resident or non-resident, will be subject to tax in Kenya if at any time during the 365 days before the disposal of the shares or comparable interests they derived 20% of their value directly or indirectly from immovable property situated in Kenya.</p> <p>The gain made by a person who held directly or indirectly 20% or more of the capital of a company resident in Kenya during the 365 days preceding the alienation will be subject to CGT.</p> <p>In addition, the person alienating the shares shall notify the Commissioner in writing where there is a change of at least 20% in the underlying ownership of the property.</p>

Provision in the Legislation	Amendment	Points to Note
Eighth Schedule Paragraph 8(4A)	<p>(b) in paragraph 8, by inserting the following new subparagraph immediately after subparagraph (4)—</p> <p>(4A) 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.</p>	<p>The intention of this new provision is to prevent persons from benefiting from transactions that have been exempt from CGT and hence paying minimal CGT or no CGT on the subsequent transfer of the property.</p> <p>The adjusted cost to be used in the subsequent transfer of the properties will be the original adjusted cost as determined in the first transfer where the five year period has not been met.</p>
Eighth Schedule Paragraph 11A	<p>(c) by deleting paragraph 11A and substituting therefor the following new paragraph—</p> <p>11A. The due date for tax payable in respect of property transferred under this Part shall be the earlier of—</p> <p>(a) receipt of the full purchase price by the vendor; or</p> <p>(b) registration of the transfer.</p>	<p>This provision has clarified the due date for the payment of CGT to be upon the receipt of the full purchase price or on registration of the transfer as the now repealed provision often created uncertainty in the interpretation of the due date for CGT remittance.</p>

# INCOME TAX ACT

Provision in the Legislation	Amendment	Points to Note
Eighth Schedule Paragraph 13(c)	(d) in paragraph 13, by deleting item (c) and substituting therefor the following new item—  (c) an internal restructuring which does not involve a transfer of property to a third party within a group which has existed for at least twenty-four months.	The introduction of this provision mandates that the group should have existed for at least two years for it to qualify for the internal restructuring CGT exemption.
Ninth Schedule Paragraph 14	The Ninth Schedule to the Income Tax Act is amended in paragraph 14, by deleting the words “ten per cent” appearing in subparagraph (1) and substituting therefor the words “twenty per cent”.	A licensee or a contractor shall immediately notify the Commissioner, in writing, if there is a twenty per cent or more change in the underlying ownership of a licensee or contractor.

# VALUE ADDED TAX ACT

**The proposed changes are effective on 1 July 2023,  
unless otherwise indicated**

# VALUE ADDED TAX

Provision in the Legislation	Amendment	Points to Note
Section 5(2)(aa)	Section 5 of the Value Added Tax Act, 2013, is amended in subsection (2)—  (a) by deleting paragraph (aa);	The amendment to delete the reduced VAT rate of 8% results in VAT at the standard rate of 16% becoming applicable to goods listed in Section B of Part 1 of the First Schedule.
Section 5(2)(ab)	(b) by deleting paragraph (ab).	This Section has been deleted but another amendment has been made to the Second Schedule resulting in the supply of liquefied petroleum gas including propane being zero rated.
Section 8(2)	Section 8 of the Value Added Tax Act, 2013, is amended in subsection (2), by deleting the words “not a registered person and” substituting therefor the words “a registered or unregistered person”.	The amendment seeks to require a supplier not having a place of business in Kenya to register for VAT irrespective of whether they are transacting with registered or non-registered persons in Kenya.
Section 12(1A)	Section 12 of the Value Added Tax Act, 2013 is amended by inserting the following new subsection immediately after subsection (1)-  (1A) Subject to sub-section (1), in the case of the national carrier, the time of supply shall be the date on which the goods are delivered or services performed.	"National carrier" has not been defined in the Act, leading to wide ranging interpretations of the phrase. It is however, believed to have been targeted at Kenya's national airline.  This amendment varies the ordinary definition of time of supply in the case of the national carrier by removing the requirement to account for VAT on the sale of tickets and issuance of invoices. Therefore, the national carrier will only be required to account for VAT either on the date on which the goods are delivered, or on performance of the services.

# VALUE ADDED TAX

Provision in the Legislation	Amendment	Points to Note
Section 17(2)	Section 17 of the Value Added Tax Act, 2013, is amended—  (a) in subsection (2), by deleting the word “or” appearing in paragraph (a) and substituting therefor the word “and”;	This amendment increases the threshold for claiming input VAT by requiring a taxpayer to comply with both requirements therein, as opposed to either of them, and subsequently disqualifies some taxpayers from offsetting the output VAT against that input VAT.
Section 17(9)	(b) by inserting the following new subsection immediately after subsection (8)—  (9) Where a <i>bona fide</i> owner of taxable supplies, who has deducted input tax under subsection (1), is compensated for the loss of the taxable supplies, the compensation shall be treated as a taxable supply and —  (a) if the compensation includes value added tax, the compensation shall be declared and the value added tax thereon remitted to the Commissioner; or  (b) if the compensation does not include value added tax, the compensation shall be declared and subjected to value added tax and the tax remitted to the Commissioner.	The amendment will impact compensation received from insurance companies. The proposal requires taxpayers to account for VAT on compensation received for loss of taxable supplies.  In instances where the compensation includes VAT, the taxpayer will be required to declare the compensation and remit the VAT. If the compensation does not include VAT, the taxpayer would have to declare the compensation and subject it to VAT, then remit the tax to the Commissioner.

Provision in the Legislation	Amendment	Points to Note
Section 31	<p>Section 31 of the Value Added Tax Act, 2013 is amended by deleting sub-section (1) and substituting therefor the following new sub-section –</p> <p>(1) Where a registered person has made a supply and has accounted for and paid tax on that supply but has not received any payment from the person liable to pay the tax on that supply and that person–</p> <p>(a) has not received any payment from the person liable to pay the tax, he may, after a period of three years from the date of the supply; or</p> <p>(b) the person to whom the supply was made has been placed under statutory management through the appointment of an administrator, receiver, or liquidator,</p> <p>he may apply to the Commissioner for refund of the tax involved:</p> <p>Provided that-</p> <p>(a) no application for a refund shall be made under this section after the expiry of ten years from the date of supply;</p> <p>(b) the refund shall be made in compliance with section 47(5) of the Tax Procedures Act;</p> <p>(c) the amounts may be credited to the taxpayer's record for use against future value added tax liabilities;</p> <p>(d) where the tax refunded under sub-section (1) and (2) is subsequently recovered from the recipient of the supply, the registered person shall refund the tax to the Commissioner with sixty days of the date of recovery;</p> <p>(e) if the payment is made within the time specified under subsection (1) and (2), an interest of two per cent per month or part thereof of the tax refunded shall forthwith be due and payable and the interest shall not exceed one hundred per cent of the refunded amount.</p>	<p>The increased time frame for making refund applications on bad debts from 4 years to 10 years will be beneficial to taxpayers.</p> <p>The amendment also broadens the scope of customers from whom a taxpayer can seek a refund from just insolvent entities (that have received a liquidation order from the courts), to include even entities that are held under statutory management.</p>

# VALUE ADDED TAX

Provision in the Legislation	Amendment	Points to Note
Section 34(1)	<p>Section 34 of the Value Added Tax Act, 2013, is amended in subsection (1), by deleting the proviso and substituting therefor the following new proviso—</p> <p>Provided that a person supplying imported digital services over the internet, an electronic network or through a digital marketplace shall register whether or not the taxable supplies meet the turnover threshold of five million shillings.</p>	<p>This amendment clarifies the position that the Kenya Shillings Five Million registration threshold does not apply to non-residents offering taxable supplies over a digital marketplace.</p> <p>Instead, all suppliers of imported digital services over a digital marketplace, regardless of whether the taxable supplies meet the turnover threshold or not, will be required to register under the VAT Act.</p>
Section 43(1)	Section 43 of the Value Added Tax Act, 2013, is amended in subsection (1), by deleting the words “in Kenya”.	This amendment seeks to allow storage of records in different locations globally.
First Schedule Section A Part 1	<p>The First Schedule to the Value Added Tax Act, 2013, is amended—</p> <p>(a) in Section A of Part I—</p> <p>(i) by deleting paragraph 20 and substituting therefor the following new paragraph—</p> <p>20. Fish and crustaceans, molluscs and other aquatic invertebrates of Chapter 3 excluding those of tariff headings 0305, 0306 and 0307;</p>	This amendment seeks to rectify the grammatical errors in the previous provision, to eliminate any ambiguity in its interpretation.



Provision in the Legislation	Amendment		Points to Note
First Schedule Section A , Part 1		(ii) By inserting the following tariff numbers and corresponding tariff descriptions, in proper sequence, into the table appearing immediately after paragraph 39-	The amendment exempts the listed items from VAT.
	<i>Tariff Number</i> 3003.41.00, 3003.42.00, 3003.43.00, and 3003.49.00	<i>Description</i> Other medicaments, containing alkaloids or derivatives thereof, put up in measured doses or in forms or packings for retail sale	
	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 informs or packings for retail sale	
	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	

Provision in the Legislation	Amendment	Points to Note
First Schedule Section A , Part 1	(iii) by deleting the tariff numbers; “0402.29.10”, “3002.19.00” and their corresponding tariff description, appearing in the table immediately after paragraph 39;	The amendment seeks to reclassify these products from exempt status to standard rated, to bring them to tax for VAT purposes.
First Schedule Section A , Part 1	(iv) by deleting the tariff number “3002.11.00” appearing in the table immediately after paragraph 39 and substituting therefor the tariff number “3822.11.00”	These amendments seek to harmonise the tariff classifications and descriptions of the said commodities with the most recent classifications and reclassifications by the World Customs Organisation (WCO), to which Kenya is a party.
First Schedule Section A , Part 1	(v) by deleting the tariff number “3002.20.00” appearing in the table immediately after paragraph 39 and substituting therefor the tariff number “3002.41.00”;	
First Schedule Section A , Part 1	(vi) by deleting the tariff number “3002.30.00” appearing in the table immediately after paragraph 39 and substituting therefor the tariff number “3002.42.00”;	

## VALUE ADDED TAX

Provision in the Legislation	Amendment	Points to Note
First Schedule Section A , Part 1	(vii) in the table appearing immediately after paragraph 39 by deleting the tariff description corresponding to the tariff number “3003.39.00” and substituting therefor the following new tariff description—  Other medicaments, containing hormones or other products of heading no. 29.37, not put up in measured doses or in forms or packings for retail sale.	These changes seek to harmonise the tariff classification and descriptions of the said commodities with the most recent classifications and reclassifications by the World Customs Organisation (WCO), to which Kenya is a party.
First Schedule Section A , Part 1	(viii) in the table appearing immediately after paragraph 39 by deleting the tariff description corresponding to the tariff number “3004.20.00” and substituting therefor the following new tariff description—  Other Medicaments containing antibiotics, put up in measured doses or in forms or packings for retail sale.	
First Schedule Section A , Part 1	(ix) in the table appearing immediately after paragraph 39 by deleting the tariff description corresponding to the tariff number “3004.32.00” and substituting therefor the following new tariff description—  Other, medicaments containing hormones or other products of heading 29.37 containing corticosteroid hormones, their derivatives or structural analogue of tariff.	
First Schedule Section A , Part 1	(x) by deleting the tariff number “3006.20.00” appearing in the table appearing immediately after paragraph 39 and substituting therefor the tariff number “3822.13.00”;	
First Schedule Section A , Part 1	(xi) in the table appearing immediately after paragraph 39 by inserting the words “on other products of heading 29.37 or” immediately before the word “spermicides” appearing in the tariff description corresponding to the tariff number “3006.60.00”;	

Provision in the Legislation	Amendment	Points to Note
First Schedule Section A , Part 1	(xii) in the table appearing immediately after paragraph 39 by deleting the words “Other artificial parts of the body” appearing in the tariff description corresponding to the tariff number “9021.50.00”;	This amendment seeks to align the tariff description of this commodity with the most recent tariff descriptions issued by the WCO.
First Schedule Section A , Part 1	(xiii) in the table appearing immediately after paragraph 39 by deleting the tariff numbers; “3005.90.10”, “3004.90.90”, “3003.90.10”, and “3003.90.00” and their corresponding tariff description thereof;	The amendments seek to reclassify these products from exempt status to standard rated, to bring them to tax for VAT purposes.
First Schedule Section A , Part 1	(xiv) by deleting paragraph 49 and substituting therefor the following new paragraph—  49. All goods and parts thereof of chapter 88;	This change seeks to harmonise the tariff classification and tariff description of the items with the most recent classifications and descriptions of the WCO.

# VALUE ADDED TAX

Provision in the Legislation	Amendment	Points to Note
First Schedule Section A , Part 1 Paragraph 63	(xv) by deleting paragraph 63 and substituting therefor the following new paragraph —  63. Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption.	The amendment seeks to oust the current VAT exemption therein, in favour of an exemption to be granted to stimulate investment into the health sector, through incentivizing investments into specialised hospitals with the prescribed capacity.
First Schedule Section A , Part 1 Paragraph 66A	(xvi) by deleting paragraph 66A;	The amendment seeks to reclassify these products from exempt status to standard rated, to bring them to tax for VAT purposes.
First Schedule Section A , Part 1 Paragraph 71	(xvii) by deleting paragraph 71 and substituting therefor the following new paragraph —  71. Printed and unprinted Perforated PE film of other plastics 15-22 gsm of tariff numbers 3921.90.10, and 3921.90.90.	This change seeks to harmonise the tariff classification and tariff description of the items with the most recent classifications and descriptions of the WCO.

# VALUE ADDED TAX

Provision in the Legislation	Amendment	Points to Note
First Schedule Section A , Part 1 Paragraph 108	(xviii) by deleting paragraph 108;	The amendment seeks to clean up the schedules and bring clarity on the VAT position of the supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight which are now standard rated.
First Schedule Section A , Part 1 Paragraph 119	(xix) by deleting paragraph 119 and substituting therefor the following new paragraph—  119. Diagnostic kits or laboratory reagents and their certified reference materials of heading 38.22 upon approval by the Cabinet Secretary responsible for matters relating to health;	The deletion seeks to clean-up the tariff description of this commodity in the Act and introduce a more accurate and up-to-date description of the same.

# VALUE ADDED TAX

Provision in the Legislation	Amendment	Points to Note
First Schedule Section A , Part 1 Paragraph 120	(xx) by deleting paragraph 120 and substituting therefor the following new paragraph—  120. Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, and other apparatus, Instruments and appliances of tariff numbers 9018.20.00, 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.	The amendment seeks to provide a more detailed tariff description of the commodities, to negate any ambiguous interpretation(s) of the same.
First Schedule Section A , Part 1 Paragraph 122	(xxi) by deleting paragraph 122 and substituting therefor the following new paragraph—  122. Other instruments and appliances, used in dental sciences of tariff 9018.49.00, Other ophthalmic instruments and appliances of tariff 9018.50.00 and other instruments and appliances of tariff number 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.	The deletion and insertion of is to provide a more detailed and accurate tariff description of the commodities, in alignment with the WCO's most recent position.
First Schedule Section A , Part 1 Paragraph 125	(xxii) by deleting paragraph 125 and substituting it with the following new paragraph—  125. Artificial teeth of tariff number 9021.21.00, other dental fittings of tariff number 9021.29.00 and other artificial parts of the body of tariff numbers 9021.31.00 and 9021.39.00 and other appliances of tariff number 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.	This amendment deletes the current/outdated description of the commodity with a more accurate description of the same, aligned with the WCO's position. This proposed amendment seeks to introduce an up-to-date tariff description of the commodity.

Provision in the Legislation	Amendment	Points to Note
First Schedule Section A , Part 1 Paragraph 128	(xxiii) by deleting paragraph 128 and substituting therefor the following new paragraph—  128. Discs, tapes, solid-state non-volatile storage devices, “smart cards” and other media for the recording of sound or of other phenomena, whether or not recorded of tariff heading 85.23, including matrices and masters for the production of discs, but excluding products of Chapter 37 upon approval by the Cabinet Secretary responsible for matters relating to health.	The deletion and insertion of is to provide a more detailed and accurate tariff description of the commodities, in alignment with the WCO's most recent position.
First Schedule Section A , Part 1 Paragraph 129	(xxiv) by deleting paragraph 129 and substituting therefor the following new paragraph—  129. Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.10.00 purchased or imported by registered hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.	Change of tariff number.
First Schedule Section A , Part 1 Paragraph 130	(xxv) by deleting paragraph 130;	The amendment seeks to reclassify these products from exempt status to standard rated, to bring them to tax for VAT purposes.



# VALUE ADDED TAX

Provision in the Legislation	Amendment	Points to Note
First Schedule Section A , Part 1 Paragraph 140	(xxvi) by inserting the words “ or locally purchased” immediately after the word “imported” appearing in paragraph 140;	The amendment includes local supplies of plant and machinery (for use by manufacturers of pharmaceutical products) in the VAT exemption.
First Schedule Section A , Part 1 Paragraph 145	(xxvii) by amending paragraph 145 in paragraph (b) by inserting the words “or other manufacturing activities including refining” immediately after the words “human vaccines”; and	The amendment includes other manufacturing activities including refining in the VAT exemption.
First Schedule Section A , Part 1 Paragraph 147	(xviii) by inserting the following new paragraph immediately after paragraph 146 -  147. Taxable supplies made to or by a school feeding programme recognized by the Cabinet Secretary responsible for matters relating to education.	Changed from standard rated to exempt.

Provision in the Legislation	Amendment	Points to Note
First Schedule Part II Paragraph 34	(iv) in Part II in paragraph 34-  (a) by deleting the words “goods, inputs and raw materials” and substituting therefor the word “services”; and  (b) by inserting the words “or other manufacturing activities including refining” immediately after the words “human vaccines” in paragraph (b);	This amendment classifies inputs and raw materials as standard rated.

Provision in the Legislation	Amendment	Points to Note
Second Schedule Part A	<p>The Second Schedule to the Value Added Tax Act, 2013, is amended –</p> <p>(a) In Part A-</p> <p>(i) by deleting paragraph 20 which provides as follows—</p> <p>20. The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight:</p> <p>Provided this paragraph shall be in operation for a period of six months from the date of assent.</p>	This is a clean-up.
Second Schedule Part A	<p>(ii) by deleting paragraph 23 and substituting therefor the following new paragraph–</p> <p>23. The exportation of taxable services.</p>	Exportation of taxable services is now zero rated.
Second Schedule Part A	<p>(iii) by inserting the following new paragraph immediately after paragraph 25—</p> <p>26. Inbound international sea freight offered by a registered person.</p> <p>27. Liquefied Petroleum Gas.</p>	With this amendment, the items listed will be zero rated.

Provision in the Legislation	Amendment	Points to Note
Second Schedule Part A	<p>28. All tea and coffee locally purchased for the purpose of value addition before exportation subject to approval by the Commissioner-General.</p> <p>29. The supply of locally assembled and manufactured mobile phones.</p> <p>30. The supply of motorcycles of tariff heading 8711.60.00</p> <p>31. The supply of electric bicycles.</p> <p>32. The supply of solar and lithium ion batteries.</p> <p>33. The supply of electric buses of tariff heading 87.02.</p> <p>34. Inputs or raw materials locally purchased or imported for the manufacture of animal feeds.</p> <p>35. Bioethanol vapour (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel).</p>	With this amendment, the items listed will be zero rated.

# TAX APPEALS TRIBUNAL ACT

**The proposed changes are effective on 1 July 2023,  
unless otherwise indicated**

# TAX APPEALS TRIBUNALS ACT

Provision in the Legislation	Amendment	Points to Note
Section 13(2)	<p>Section 13 of the Tax Appeals Tribunal Act, 2013, is amended—</p> <p>(a) in subsection (2), by deleting paragraph (c) and substituting therefor the following new paragraphs—</p> <p>(c) the appealable decision; and</p> <p>(d) such other documents as may be necessary to enable the Tribunal to make a decision on the appeal.</p>	<p>The amendment seeks to substitute a tax decision with an appealable decision as defined under Section 3(1) of the Tax Procedures Act.</p> <p>The requirement of filing of documents necessary to determine the appeal aligns the TAT Act with Rule 5(1) of the Tax Appeals Tribunal (Procedure) Rules that requires that documentary evidence be annexed to the statement of facts.</p>
Section 13(9)	<p>b) by inserting the following new subsection immediately after subsection (8)—</p> <p>(9) For the purposes of this section, “appealable decision” has the meaning assigned to it in section 3(1) of the Tax Procedures Act, 2015.</p>	<p>This definition provides alignment with the Tax Procedures Act.</p>

# EXCISE DUTY

**The proposed changes are effective on 1 July 2023,  
unless otherwise indicated**

# EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
Section 2	Section 2 of the Excise Duty Act, 2015, is amended in the definition of “excise control” by deleting the expression “section 23” and substituting therefor the expression “section 24”.	The purpose of the amendment is to correct an error in the definition of 'excise control' which is defined under Section 24 and not Section 23.
Section 10	The Excise Duty Act, 2015, is amended by repealing section 10.	<p>The effect of this amendment is that the Commissioner will no longer have the power to adjust excise duty rates to take into account inflation. Only the Cabinet Secretary for National Treasury will retain the authority to vary excise duty rates under Section 8 subject to the approval of the National Assembly.</p> <p>The Commissioner has previously exercised this power under Section 10, for example, Legal Notice No. 176 published on 3 October 2022 adjusting excise duty rates to account for inflation.</p>



# EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
Section 20(5)(b)	Section 20 of the Excise Duty Act, 2015, is amended in subsection (5), by inserting the words “being not less than fourteen days” immediately after the words “date specified in the notice” appearing in paragraph (b).	<p>This Section provides for the procedure to be followed where the Commissioner suspends a licence issued under the Act (e.g., for the manufacture, importation or supply of excisable goods/services).</p> <p>A licensed person is first issued with a Notice of Suspension and is allowed to appeal to the Commissioner against the suspension within 14 days.</p> <p>The Commissioner then has 14 days to consider the appeal and either accept it and revoke the suspension or reject it and uphold the suspension, or to issue a written notice to the person requiring them to take action to remedy the deficiency that led to the suspension.</p> <p>The amendment makes it clear that where the Commissioner issues a notice to the licensed person to remedy the deficiencies, the licensed person shall be given not less than 14 days to remedy the deficiency.</p>

# EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
Section 28(6)	<p>Section 28 of the Excise Duty Act, 2015, is amended by inserting the following new subsections immediately after subsection (5)—</p> <p>(6) A person who—</p> <p>(a) defaces or prints over an excise stamp affixed on any excisable goods or package;</p> <p>(b) knowingly is in possession of excisable goods on which excise stamps have not been affixed and which have not been exempted from the requirements of this Act or Regulations made under this Act;</p> <p>(c) acquires or attempts to acquire an excise stamp without the authority of the Commissioner;</p> <p>(d) prints, counterfeits, makes or in any way creates an excise stamp without the authority of the Commissioner;</p> <p>(e) knowingly is in possession of an excise stamp which has been printed, made or in any way acquired without the authority of the Commissioner;</p> <p>(f) knowingly is in possession of, conveys, distributes, sells, offers for sale or trades in excisable goods without affixing excise stamps in accordance with this Act or Regulations made under this Act; or</p> <p>(g) is in possession of, conveys, distributes, sells, or trades in excisable goods which have been affixed with counterfeit excise stamps,</p> <p>commits an offence.</p>	<p>An excise stamp is a type of revenue stamp affixed to some excisable goods to indicate that the required excise duty has been paid by the manufacturer.</p> <p>Currently, Section 40 simply provides in general terms that any person who contravenes Section 28 commits an offence.</p> <p>The amendment expressly describes the offences relating to excise stamps.</p> <p>Section 41 currently provides that a person convicted of an offence under Section 39 and 40 is liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both a fine and imprisonment.</p> <p>Following the introduction of a description of offences under Section 28(6) (and the proposed deletion of Section 40), this amendment now provides sanctions applicable to those offences.</p>

# EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
Section 28(7)	(7) A person who commits an offence under subsection (6) is liable, upon conviction, to a fine not exceeding five million shillings or imprisonment for a term not exceeding three years, or to both.	This provision provides the penalty for conviction of the offences listed under Section 28(6).

# EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
Section 36(1A)	<p>Section 36 of the Excise Duty Act, 2015, is amended by inserting the following new subsection immediately after subsection (1)-</p> <p>(1A) Despite subsection (1), in the case of a licensed manufacturer of alcoholic beverages, excise duty shall be payable to the Commissioner within twenty-four hours upon removal of the goods from the stockroom.</p>	Manufacturers of alcoholic beverages are now to remit excise duty within 24-hours after the goods are removed from the stockroom.
Section 36A	<p>The Excise Duty Act, 2015, is amended by inserting the following new section immediately after section 36—</p> <p>36A. (1) Despite the provisions of section 36, excise duty on betting and gaming, offered through a platform or other medium, shall be remitted to the Commissioner by a bookmaker within twenty-four hours from the closure of transactions of the day.</p> <p>(2) For the purposes of this section, “closure of transactions of the day” means midnight of that day.</p> <p>(3) The Commissioner may, by notice in the Gazette, require taxpayers in any sector to remit excise duty collected on certain excisable services within twenty-four hours from the closure of transactions of the day.</p>	<p>Betting is categorised as an excisable service under Part II of the First Schedule. Section 36(2) provides that excise duty shall be paid not later than the twentieth day of the succeeding month in respect of supplies made in a calendar month.</p> <p>Under the amendment, excise duty on betting and gaming shall be remitted within twenty-four hours from the closure of the transactions of the day (that is, midnight).</p> <p>Additionally, the proposed Section 36A(3) provides that the Commissioner has power to require a taxpayer in any sector to remit excise duty collected on excisable services within 24 hours from the closure of transactions of the day.</p>

# EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
Section 40	The Excise Duty Act, 2015, is amended by repealing section 40.	This amendment is in line with the introduction of specific offences under Section 28 (explained above).
First Schedule Paragraph 1 of Part 1	<p>The First Schedule to the Excise Duty Act, 2015, is amended—</p> <p>(a) in Part I—</p> <p>(i) by deleting the tariff number 2709.00.10 appearing in paragraph 1, and the corresponding tariff description and rate of duty;</p>	The effect is that condensates under this tariff no. will no longer be excisable.
First Schedule Paragraph 1 of Part 1	<p>(ii) by deleting the tariff description “Imported White chocolate including chocolate in blocks, slabs or bars of tariff nos. 1806.31.00, 1806.32.00, and 1806.90.00” and substituting therefor the following tariff description—</p> <p>Imported white chocolate of heading 1704;</p> <p>Imported chocolate and other food preparations containing cocoa of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00;</p>	<p>Heading 1704 covers sugar confectionery (including white chocolate), not containing cocoa, while 1806 provides for chocolate and other food preparations containing cocoa.</p> <p>The amendment therefore provides a clarification that both white chocolate not containing cocoa and chocolate and other food preparations containing cocoa are covered under this paragraph.</p> <p>The word imported has been included in the Act.</p>

# EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
First Schedule Paragraph 1 of Part 1	(iii) by inserting the word “Imported” immediately before the tariff description “Articles of plastic of tariff heading 3923.30.00 and 3923.90.90”;	This appears to be erroneous as the tariff description already contains the word "Imported."
First Schedule Paragraph 1 of Part 1	(iv) by deleting the following description “Motorcycles of tariff 87.11 other than motorcycle ambulances and locally assembled motorcycles” and substituting therefor the following new description “Motorcycles of tariff 87.11 other than motorcycle ambulances, locally assembled motorcycles and electric motorcycles”;	The amendment seeks to include electric motorcycles as exempt from excise duty.
First Schedule Paragraph 1 of Part 1	(v)in the item of tariff description “Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products)” by deleting the rate of excise duty of “25%” and substituting therefor the rate of excise duty of “35%”;	Excise duty increased by 10%.
First Schedule Paragraph 1 of Part 1	(vi) in the item of tariff description “Imported Alkyd” by deleting the rate of excise duty of “10%” and substituting therefor the rate of excise duty of “20%”;	Excise duty increased by 10%.
First Schedule Paragraph 1 of Part 1	(vii) in the item of tariff description “Imported Unsaturated polyester” by deleting the rate of excise duty of “10%” and substituting therefor the rate of excise duty of “20%”;	Excise duty increased by 10%.

# EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
First Schedule Paragraph 1 of Part 1	(viii) in the item of tariff description “Imported Emulsion VAM” by deleting the rate of excise duty of “10%” and substituting therefor the rate of excise duty of “20%”.	Excise duty increased by 10%.
First Schedule Paragraph 1 of Part 1	(ix) in the item of tariff description “Imported Emulsion - styrene Acrylic” by deleting the rate of excise duty of “10%” and substituting therefor the rate of excise duty of “20%”;	Excise duty increased by 10%.
First Schedule Paragraph 1 of Part 1	(x) in the item of tariff description “Imported Homopolymers” by deleting the rate of excise duty of “10%” and substituting therefor the rate of excise duty of “20%”;	Excise duty increased by 10%.
First Schedule Paragraph 1 of Part 1	(xi) in the item of tariff description “Imported Emulsion B.A.M.” by deleting the rate of excise duty of “10%” and substituting therefor the rate of excise duty of “20%”.	Excise duty increased by 10%.

# EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note																				
First Schedule Part 1	(xii) by inserting the following new items at the end of the second table appearing in paragraph 1—	Imported furniture excludes furniture originating from EAC- For goods to qualify as originating in the EAC, they must be wholly produced in the EAC or must undergo sufficient working or processing in EAC using materials imported from third countries.  Imported cellular phones - currently provided under Paragraph 7 of Part II of the First Schedule.																				
	<table><tr><th>Description</th><th>Rate of Excise Duty</th></tr><tr><td>Imported fish</td><td>10%</td></tr><tr><td>Powdered juice</td><td>Shs. 25 per kg</td></tr><tr><td>Imported sugar excluding imported sugar purchased by a registered pharmaceutical manufacturer</td><td>Shs. 5 per kg</td></tr><tr><td>Imported cement</td><td>10% of the value or shs. 1.50 per kg, whichever is higher</td></tr><tr><td>Imported furniture of tariff heading 9403 excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin</td><td>30%</td></tr><tr><td>Imported cellular phones</td><td>10%</td></tr><tr><td>Imported paints, varnishes and lacquers of heading 3208, 3209 and 3210</td><td>15%</td></tr><tr><td>Imported non-virgin test liner of heading 4805.24.00</td><td>25%</td></tr><tr><td>Imported non-virgin fluting medium of heading 4805.19.00</td><td>25%</td></tr></table>		Description	Rate of Excise Duty	Imported fish	10%	Powdered juice	Shs. 25 per kg	Imported sugar excluding imported sugar purchased by a registered pharmaceutical manufacturer	Shs. 5 per kg	Imported cement	10% of the value or shs. 1.50 per kg, whichever is higher	Imported furniture of tariff heading 9403 excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin	30%	Imported cellular phones	10%	Imported paints, varnishes and lacquers of heading 3208, 3209 and 3210	15%	Imported non-virgin test liner of heading 4805.24.00	25%	Imported non-virgin fluting medium of heading 4805.19.00	25%
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# EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
First Schedule Part 1		
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# EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
First Schedule Paragraph 1 of Part II	(b) in Part II—  (i) by deleting the words “twenty percent” appearing in paragraph 1 and substituting therefor the words “fifteen percent”;	The effect is a decrease in the rate of excise duty.
First Schedule Paragraph 2 of Part II	(ii) by deleting the words “twenty percent” appearing in paragraph 2 and substituting therefor the words “fifteen percent”;	The effect is a decrease in the rate of excise duty.
First Schedule Paragraph 3 of Part II	(iii) by deleting the words “shall be twelve percent” appearing in paragraph 3 and substituting therefor the words “or payment service provides licensed under the National Payment System Act, 2011, shall be fifteen percent”;	The effect is an increase in the rate of excise duty.  It also subjects other payment service providers apart from cellular phone service providers to excise duty.
First Schedule Paragraph 4A of Part II	(iv) by deleting the words “seven-point five per cent” appearing in paragraph 4A and substituting therefor the words “twelve point five per cent”;	The effect is an increase in the rate of excise duty.

# EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
First Schedule Paragraph 4B of Part II	(v) by deleting the words “seven-point five per cent” appearing in paragraph 4B and substituting therefor the words “twelve point five per cent”;	The effect is an increase in the rate of excise duty.
First Schedule Paragraph 4C of Part II	(vi) by deleting the words “seven-point five per cent” appearing in paragraph 4C and substituting therefor the words “twelve point five per cent”;	The effect is an increase in the rate of excise duty.
First Schedule Paragraph 4D of Part II	(vii) by deleting the words “seven-point five per cent” appearing in paragraph 4D and substituting therefor the words “twelve point five per cent”;	The effect is an increase in the rate of excise duty.
First Schedule Paragraph 7 of Part II	(ix) by deleting paragraph 7;	The deletion of paragraph 7 is as a result of the introduction of imported cellular phones as an excisable good.

# EXCISE DUTY ACT

Provision in the Legislation	Amendment	Points to Note
First Schedule Paragraph 8	(ix) by inserting 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.	This provision introduces excise duty on advertisement fees paid for advertising alcoholic beverages, betting, gaming, lotteries and prize competitions.
First Schedule Part III	(c) in Part III—  (i) by inserting the words “or gaming” immediately after the word “betting” appearing in the definition of “amount wagered or staked”.	Definition amended to include gaming.
Second Schedule Paragraph 17	The Second Schedule to the Excise Dut Act, 2015 is amended in Part A by inserting the following new paragraph immediately after paragraph 16-  17. Disassembled or unassembled kits for local assembly or manufacture mobile phones.	The goods listed in the new provision are now exempt from excise duty.

# TAX PROCEDURES ACT

The proposed changes are effective on 1 July 2023,  
unless otherwise indicated

# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Section 3(e) and (g)	<p>Section 3 of the Tax Procedures Act, 2015, is amended in the definition of “tax decision” —</p> <p>(a) By deleting item (e);</p> <p>(b) By inserting the words “or late payment interest” immediately after the word “penalty” appearing in paragraph (g).</p>	<p>Seeks to exclude a refund decision as a tax decision.</p> <p>This aligns with Section 47(13) of the Tax Procedures Act (TPA) on refunds which also provides that one can appeal to the Tax Appeals Tribunal (TAT) against a refund decision.</p> <p>There is need to amend the TAT Rules to align the definition of a tax decision to exclude a refund decision.</p> <p>Includes a demand for late payment interest as a tax decision.</p>
Section 6A	<p>Section 6A of the Tax Procedures Act, 2015, is amended by inserting the following new subsection immediately after subsection (2)—</p> <p>(3) Any multilateral agreement or treaty that has been entered into by or on behalf of the Government of Kenya relating to mutual administrative assistance in the collection of taxes shall have effect in the manner stipulated in such agreement or treaty.</p>	<p>It provides for treaties entered into by the Government of Kenya on mutual administrative assistance in the collection of taxes to have effect as provided in the treaty.</p>

# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Section 23(3A)	<p>Section 23 of the Tax Procedures Act, 2015, is amended by inserting the following new subsection immediately after subsection (3)—</p> <p>(3A) A trustee resident in Kenya who administers a trust registered in Kenya or outside Kenya shall maintain and avail to the Commissioner records required under a tax law, whether the income generated is subject to tax in Kenya or not.</p>	<p>This provision specifically provides that trusts registered in Kenya or outside Kenya should maintain records and provide such records to KRA whether the trust's income is taxable in Kenya or not.</p> <p>The provision is targeting registered trusts with an aim of increasing the visibility of records for any tax liabilities that may be due in Kenya.</p>
Section 23A	<p>The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 23—</p> <p>23A. (1) The Commissioner may establish an electronic system through which electronic tax invoices may be issued and records of stocks kept for the purposes of this Act.</p> <p>(2) A person who carries on business shall—</p> <p>(a) issue an electronic tax invoice through the system established under subsection (1); and</p> <p>(b) maintain a record of stocks in the system established under subsection (1).</p> <p>(3) Where an electronic tax invoice required to ascertain tax liability is issued by a resident person or the permanent establishment of a non-resident person, that invoice shall be generated through the system established under subsection (1).</p> <p>(4) The electronic tax invoice referred to in subsection (3) may exclude emoluments, imports, investment allowances, interest, and similar payments.</p> <p>(5) The Commissioner may, by notice in the <i>Gazette</i>, exempt a person from the requirements of this section.</p>	<p>The amendment is intended to align the TPA with the adoption of the electronic tax record keeping systems that the KRA has adopted to boost revenue collection such as the adoption of eTims under the VAT Act.</p> <p><b>Effective date 1 September 2023.</b></p>

# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Section 31	Section 31 of the Tax Procedures Act, 2015, is amended in the opening words of subsection (6), by deleting the word “original”.	The amendment aims to correct a grammatical error by clarifying that it is an amended assessment.
Section 32A	<p>The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 32—</p> <p>32A. (1) The Commissioner may recover or collect a tax claim pursuant to an international tax agreement contemplated in section 6A (3).</p> <p>(2) The recovery of the tax claim under subsection (1), shall be in response to a request by the competent authority of a party to the international tax agreement.</p> <p>(3) The request under subsection (2) shall be in respect of a tax claim which forms the subject of the international tax agreement permitting its enforcement in the requesting party and, unless otherwise agreed between the parties, which is not contested:</p> <p>Provided that where the tax claim is against a person who is not a resident of the requesting state, this section shall only apply, unless otherwise agreed between the parties to the international tax agreement, where the claim may no longer be contested.</p> <p>(4) The Commissioner, in respect of a request under subsection (2)—</p> <p>(a) may apply for an order under section 43(3); and</p> <p>(b) shall issue to the person who is alleged to be liable to pay the tax a notice requiring that person to state, within the period specified in the notice, whether that person admits liability for the amount or a lesser amount.</p>	Seeks to give KRA the power and the procedure to collect taxes under treaties under the Mutual Administrative Assistance in Tax Matters in Double Tax Agreements and in line with international law.



# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Section 32A	<p>(5) The request under subsection (2) shall—</p> <p>(a) be in the prescribed form;</p> <p>(b) be accompanied by a tax claim issued by the requesting party in the form provided for by the relevant law of that requesting party;</p> <p>(c) indicate the amount of the tax due;</p> <p>(d) indicate whether liability for the amount is contested under the laws of the requesting party;</p> <p>(e) indicate, where liability for the amount is contested, whether the requesting party believes that the purpose of the dispute is to delay or frustrate the collection of the amount alleged to be due; and</p> <p>(f) indicate whether there is a risk of the person who is alleged to be liable to pay the tax due, dissipating or concealing assets.</p> <p>(6) Where the person who is alleged to be liable to pay the tax due admits liability, the Commissioner may issue a notice requiring that person to pay the amount for which the person has admitted liability, on a date specified in the notice.</p> <p>(7) Where the person who is alleged to be liable to pay the tax due contests liability, the Commissioner shall, after consulting the requesting party, determine whether—</p> <p>(a) the liability for the amount due is not disputed in terms of the relevant laws of the requesting state;</p>	<p>Seeks to give KRA the power and the procedure to collect taxes under treaties under the Mutual Administrative Assistance in Tax Matters in Double Tax Agreements and in line with international law.</p>

# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Section 32A	<p>(b) despite the liability for the tax due being contested, the purpose of the dispute is to delay or frustrate the collection of the tax due; or</p> <p>(c) there is a risk of the person who is alleged to be liable to pay the tax due, dissipating or concealing assets, and the Commissioner may then issue a notice requiring that person to pay the tax due or amount specified in the notice, on a date specified in the notice.</p> <p>(8) If the person fails to comply with the notice under subsection (6), the Commissioner may commence proceedings for the recovery of the tax claim.</p> <p>(9) The steps taken to assist the requesting party shall not affect the right of the person who is alleged to be liable to pay the tax due to have the liability for the tax determined in accordance with the Laws of Kenya.</p> <p>(10) Where the Commissioner recovers or collects the tax due to the requesting party, the Commissioner shall deposit the amount into a dedicated account in the Central Bank of Kenya after which the amount shall be remitted to an account specified by the requesting party.</p>	<p>Seeks to give KRA the power and the procedure to collect taxes under treaties under the Mutual Administrative Assistance in Tax Matters in Double Tax Agreements and in line with international law.</p>
Section 37	The Tax Procedures Act, 2015, is amended repealing section 37.	<p>The proposed amendment seeks to reduce uncollected tax relating to abandonment of taxes.</p> <p>The deletion of this provision denies KRA and taxpayers an avenue for relief where there is great difficulty in recovery of taxes.</p>

# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Section 37E	<p>The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 37D—</p> <p>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 had paid all the principal tax due before the 31st December, 2022.</p> <p>(2) Where all the principal tax due had not been paid before the 31st December 2022, a person shall apply to the Commissioner for an amnesty of interest or penalties on the unpaid tax, and propose a payment plan for the outstanding amount.</p> <p>(3) For the purposes of subsection (2)—</p> <p>(a) the amnesty shall be on interest or penalties on the unpaid tax that have accrued up to the 31st December, 2022;</p> <p>(b) the amnesty shall only be granted once if the person—</p> <p>(i) applies for amnesty and pays all the outstanding principal taxes not later than the 30th June 2024;</p> <p>(ii) does not incur a further tax debt; and</p> <p>(iii) signs a commitment letter for the settlement of all outstanding taxes that the person may owe.</p>	<p>This amendment is a welcome relief for taxpayers who had “tax debt” payable prior to 31 December 2022.</p> <p>The amendment is an incentive to entice taxpayers to clear all principal taxes due (from tax due on or before 31 December 2022) in order to benefit from the amnesty on interest and penalties.</p> <p>Provides the procedure to be followed for the amnesty on penalties and interest.</p> <p><b>Effective date 1 September 2023.</b></p>

# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Section 37E	<p>(4) Despite subsection (2), any amount of principal tax as at 31<sup>st</sup> December, 2022 that remains unpaid on the 30<sup>th</sup> June, 2024 shall attract interest and penalties for which no amnesty shall be granted under this section.</p> <p>(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.</p>	<p>This amendment is a welcome relief for taxpayers who had “tax debt” payable prior to 31 December 2022.</p> <p>The amendment is an incentive to entice taxpayers to clear all principal taxes due (from tax due on or before 31 December 2022) in order to benefit from the amnesty on interest and penalties.</p> <p>Provides the procedure to be followed for the amnesty on penalties and interest</p> <p>The introduction of subsection 5 excludes the application of the provision to tax avoidance penalties.</p> <p><b>Effective date 1 September 2023.</b></p>

# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Section 42(14)	<p>Section 42 of the Tax Procedures Act, 2015, is amended by deleting subsection (14) and substituting therefor the following new subsection —</p> <p>(14) The Commissioner shall not issue a notice under this section unless—</p> <p>(a) the taxpayer has defaulted in paying an instalment under section 33(2);</p> <p>(b) the Commissioner has raised an assessment and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period;</p> <p>(c) the taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines;</p> <p>(d) the taxpayer has made a self-assessment and submitted a return but has not paid the taxes due before the due date lapsed; or</p> <p>(e) the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.</p>	<p>The amendment seeks to expand the circumstances in which the KRA may issue agency notices.</p> <p>Lapses in challenging an assessment within the requisite timelines may expose taxpayers to agency notices.</p>

# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Section 42A	Section 42A of the Tax Procedures Act, 2015, is amended —  (a) In the proviso to subsection (1), by deleting the words “commencement of this Act” and substitute therefor the expression “1 <sup>st</sup> July 2022”.	The decision to subject large-scale manufactures to withholding VAT poses a risk to the Government’s intention to grow the manufacturing sector.
Section 42A(4B)	b) by deleting subsection (4B) and substituting therefor the following new subsection—  (4B) The tax withheld under this section shall be remitted to the Commissioner within five working days after the deduction was made.	The amendment will now require taxpayers to pay withholding VAT within 5 working days. This will still pose a challenge in terms of VAT compliance as taxpayers will now be subject to a timeline different from the monthly reporting that is normally done.
Section 42A	(c) in subsection 4C (b) by deleting the words “twentieth day of the month following that in which” and substituting therefor the words “fifth working day after”.	

# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Section 42C	<p>The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 42B—</p> <p>42C. (1) The Commissioner may appoint an agent for the purpose of the collection and remittance of rental income tax to the Commissioner.</p> <p>(2) An appointment under subsection (1) may be revoked at any time by the Commissioner.</p>	Gives KRA power to appoint agents for collection of rental income.

# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Section 47	<p>Section 47 of the Tax Procedures Act, 2015, is amended—</p> <p>(a) in subsection (1), by inserting the words “outstanding tax debts and” immediately after the word “taxpayer’s” appearing in paragraph (a);</p> <p>b) in subsection (2)—</p> <p>(i) by inserting the words “outstanding tax debts or” immediately after the word “such” appearing in paragraph (a);</p> <p>(ii) by deleting the words “two years from the date of application” appearing in paragraph (b) and substituting therefor the words “six months from the date of ascertainment and, if the Commissioner fails to refund, the overpaid tax shall be applied to offset the taxpayer’s outstanding tax debt or future tax liabilities”;</p> <p>Section 47 of the Tax Procedures Act, 2015, is amended—</p> <p>(c) by inserting the following new subsection immediately after subsection (4)—</p> <p>(4A) Where an application under subsection (1) has been subjected to an audit under subsection (4), the Commissioner shall ascertain and determine the application within one hundred and twenty days failure to which, the application shall be deemed to have been ascertained and approved.</p>	<p>The provision proposes to enable taxpayers and KRA to offset the overpaid taxes against outstanding liabilities and not only future liabilities as previously provided.</p> <p>Reduces the timeline for KRA to refund overpaid tax from 2 years to 6 months failure to which the overpaid tax will be used to offset future or outstanding tax liabilities.</p> <p>Requires KRA to conduct a refund audit and determine a refund application within 120 days failure to which the application is deemed to be approved.</p>



# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Section 51	<p>Section 51 of the Tax Procedures Act, 2015, is amended—</p> <p>(a) in subsection (4), by inserting the words “and request the taxpayer to submit the information specified in the notice within seven days after the date of the notice” immediately after the words “validly lodged”;</p> <p>(b) by inserting the following new subsection immediately after subsection (4)—</p> <p>(4A) Despite subsection (3), where a taxpayer fails to provide the information required under subsection (4) or fails to provide the information within the specified period, the Commissioner may make an objection decision within sixty days after the date on which the notice of objection was lodged.</p>	<p>Gives KRA power to seek the taxpayer to submit information to validly lodge their objection as per 51(3) [grounds, amendments, reasons and payment of tax not in dispute] within 7 days of KRA’s notice.</p> <p>If the taxpayer fails to provide the information within the specified time KRA may make an objection decision within 60 days of the date of the notice of objection.</p>
Section 55	<p>Section 55 of the Tax Procedures Act, 2015, is amended in subsection (1), by deleting the words “ninety days” and substituting therefor the words “one hundred and twenty days”.</p>	<p>This seeks to increase the Alternative Dispute Resolution statutory period to 120 days from 90 days.</p>

# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
59A	<p>The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 59—</p> <p>59A. (1) The Commissioner may establish a data management and reporting system for the submission of electronic documents including detailed transactional data relating to those documents.</p> <p>(2) The Commissioner shall notify in writing the persons required to submit electronic documents through the system established under subsection (1).</p> <p>(3) The electronic documents referred to in subsection (2) include electronic invoice returns—</p> <p>(a) of payments made by a person in the ordinary course of business where goods were exchanged for consideration by a person not employed in the business;</p> <p>(b) for payments made by a person in the ordinary course of business where services were rendered, or in anticipation of services to be rendered, by a person not employed in the business;</p> <p>(c) for payments for services rendered, or in anticipation of services to be rendered, in connection with the formation, acquisition, development, or disposal of a business or a part of it, by persons not employed in the business;</p> <p>(d) for periodical or lump sum payments in respect of a royalty; or</p> <p>(e) for such other commercial or financial transaction as may be designated by the Commissioner.</p>	<p>Gives KRA the power to establish a data management and reporting system for taxpayers to submit documents in electronic form such as electronic invoices and payments for goods, services, acquisitions or disposals of business, royalty or any other form of commercial or financial transactions.</p> <p><b>Effective date 1 September 2023.</b></p>

Provision in the Legislation	Amendment	Points to Note
Section 59A	<p>(4) For the purposes of this section—</p> <p>(a) “transactional data” includes—</p> <p>(i) the names and addresses of each person to whom a payment was made;</p> <p>(ii) where the payment is for services, the amount of the payment specifying whether the payment is a commission of any kind or is for expenses incurred in connection with rendering the services;</p> <p>(iii) where the payment is in any form of valuable consideration other than money, the particulars of the consideration; and</p> <p>(iv) such other particulars as the Commissioner may specify;</p> <p>(b) references to payments for services include references to payments in the nature of commission of any kind and references to payments in respect of expenses incurred in connection with the rendering of services; and</p> <p>(c) references to the making of payments include references to the giving of any form of valuable consideration, and the requirement imposed by paragraph (a)(iii) to state the amount of a payment shall, in relation to any consideration given otherwise than in the form of money, be construed as a requirement to give particulars of the consideration.</p>	<p>The transactional data to be submitted will include details of the person receiving payment, whether the payment is a commission or reimbursement, the consideration whether monetary or in other valuable form.</p> <p><b>Effective date 1 September 2023.</b></p>

# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Section 86	<p>The Tax Procedures Act, 2015, is amended by repealing section 86 and substituting therefor the following new section—</p> <p>86. (1) Where a tax law requires a taxpayer to issue an electronic tax invoice, submit a tax return in electronic form or pay a tax electronically, and the taxpayer fails to comply with that tax law, the Commissioner shall issue a notice in writing to the taxpayer requesting the reasons for the non-compliance.</p> <p>(2) Where the reasons given under subsection (1) do not satisfy the Commissioner, the taxpayer shall be liable to a penalty two times the amount of the tax due.</p>	<p>Widens the provision to include the submission of electronic invoice (previously only applied to submission of a tax return or payment in electronic form).</p> <p>Increases the penalty for failing to comply with electronic submission of return, payment or electronic invoice from KShs.100,000 to two times the tax due.</p> <p><b>Effective date 1 September 2023.</b></p>

# TAX PROCEDURES ACT

Provision in the Legislation	Amendment	Points to Note
Section 89	<p>Section 89 of the Tax Procedures Act, 2015, is amended —</p> <p>(a) by deleting subsection (6);</p> <p>(b) by deleting subsection (7);</p> <p>(c) by deleting subsection (8).</p>	Seeks to remove the power and discretion of KRA to remit interest and penalties upon application by a taxpayer or on its own motion and/or after approval of Treasury.
Section 97A	<p>The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 97—</p> <p>97A. (1) A person who is not an authorised officer commits an offence if that person assumes the name or designation of an authorised officer and performs or procures the performance of any act which that person is not entitled to do.</p> <p>(2) A person convicted of an offence under subsection (1) shall be liable to imprisonment for a term not exceeding three years.</p>	Introduces an offence for impersonation of a KRA officer which upon conviction one is liable to imprisonment for a maximum of 3 years.
Section 104	Section 104 of the Tax Procedures Act, 2015, is amended in subsection (1), by deleting the word “and” and substituting therefor the word “or”.	Clarifies the general penalty is a fine of a maximum of KShs.1 Million or imprisonment of up to 3 years.

# MISCELLANEOUS FEES AND LEVIES ACT

The proposed changes are effective on 1 July 2023,  
unless otherwise indicated

# MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Points to Note
Section 7(2)	Section 7 of the Miscellaneous Fees and Levies Act, 2016 is amended –  a) in subsection (2), by deleting the words “three point five” and substituting therefor the words “two point-five”;	The reduction in Import Declaration Fee (IDF) from 3.5% to 2.5% will reduce the cost of importation of goods into Kenya.
Section 7(2A)	(b) by deleting subsection (2A);	<p>Deletion of this subsection means that IDF at the proposed rate of 2.5% on the customs value of the goods, will apply to the importation of raw materials and intermediate goods for the manufacturers and inputs for the construction of houses under the affordable housing scheme.</p> <p>This is an increase in IDF for this category of goods, which are currently subjected to an IDF of 1.5% of the customs value of the goods.</p> <p>This proposal contradicts the Government's agenda to support the manufacturing industry and the affordable housing sector.</p>

# MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Points to Note
Section 7(3)(b)	(c) in subsection (3) by deleting paragraph (b).	<p>The provision provided for a preferential IDF of 1.5% for goods imported under the EAC Duty Remission Scheme.</p> <p>The deletion of this provision will result in an increase in the IDF on the importation of goods previously imported under the EAC Duty Remission Scheme. This will result in an increase of costs to manufacturers, and the same will likely be passed on to consumers.</p>
Section 5	Section 5 of the Miscellaneous Fees and Levies Act, 2016, is amended by deleting subsection (4).	<p>The effect of the amendment is that the Commissioner will no longer have the power to adjust the rates of export levy annually.</p>



# MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Points to Note
Section 7	<p>The Miscellaneous Fees and Levies Act, 2016, is amended by inserting the following new section immediately after section 7 –</p> <p>7A. (1) There shall be paid a levy to be known as the export and investment promotion levy, on all goods specified in the Third Schedule, imported into the country for home use.</p> <p>(2) The levy shall be at the rates specified in the Third Schedule and shall be paid by the importer of such goods at the time of entering the goods into the country for home use.</p> <p>(3) The purpose of the levy shall be to provide funds to boost manufacturing, increase exports, create jobs, save on foreign exchange and promote investments.</p> <p>(4) The export and investment promotion levy shall not be charged on goods originating from the East African Community Partner States that meet the East African Community Rules of Origin.</p> <p>(5) The funds collected from the levy shall be paid into a fund established and managed in accordance with the Public Finance Management Act, 2012.</p>	<p>This amendment introduces an Export and Investment Promotion Levy (EIPL) on goods specified in the Third Schedule. These goods include cement clinkers, iron products, kraft paper, sacks, and bags.</p> <p>Sub-section 3 states that the purpose of the EIPL is to provide funds to boost manufacturing, increase exports, create jobs, save on foreign exchange and promote investments.</p> <p>This amendment seems to be one of the measures the Government is using to increase tax revenues for the advancement of the Government's agenda.</p>

# MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Points to Note
Section 8(2)	Section 8 of the Miscellaneous Fees and Levies Act, 2016, is amended –  (a) in subsection (2) by deleting the words “two” and substituting therefor the words “one point-five”;	The reduction in Railway Development Levy from 2.5% to 1.5% will result in a marginal reduction in the cost of importation of goods intended for use in Kenya.
Section 8(2A)	(b) by deleting subsection (2A).	<p>The deletion of this section will mean that goods that were previously subject to RDL at a reduced rate will be subjected to RDL at the amended rate of 1.5% on the customs value.</p> <p>Consequently, all goods imported for home use (use in Kenya) will be subjected to RDL at a rate of 1.5% on the customs value.</p>

# MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Points to Note						
First Schedule Part I	<p>The table appearing in Part I of the First Schedule to the Miscellaneous Fees and Levies Act, 2016, is amended by –</p> <p>(a) deleting the tariff description together with the rates of export levy corresponding to tariff number “4101.20.00” and substituting therefor the following –</p> <table><tr><th>Tariff No.</th><th>Tariff Description</th><th>Export Levy Rate</th></tr><tr><td>4101.20.00</td><td>Whole unsplit hides and skins, of a weight per skin not exceeding 8kg. when simply dried, 10kg. when dry salted, or 16kg. when fresh, wet salted or otherwise preserved.</td><td>50% or USD 0.32 whichever is higher.</td></tr></table> <p>(b) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4102.21.00 and substituting therefor the expression “50% or USD 0.32 whichever is higher”;</p>	Tariff No.	Tariff Description	Export Levy Rate	4101.20.00	Whole unsplit hides and skins, of a weight per skin not exceeding 8kg. when simply dried, 10kg. when dry salted, or 16kg. when fresh, wet salted or otherwise preserved.	50% or USD 0.32 whichever is higher.	<p>The amendment seeks to reduce the export levy rates for goods under this category from the higher of “<b>80% or USD 0.52</b>” to the higher of “<b>50% or USD 0.32</b>”.</p> <p>This amendment reduces the export levy rates seeking to encourage the exportation of products manufactured in Kenya.</p> <p>The reduced rates are intended to spur the growth in various industries by tapping into export markets.</p>
Tariff No.	Tariff Description	Export Levy Rate						
4101.20.00	Whole unsplit hides and skins, of a weight per skin not exceeding 8kg. when simply dried, 10kg. when dry salted, or 16kg. when fresh, wet salted or otherwise preserved.	50% or USD 0.32 whichever is higher.						

# MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Points to Note						
First Schedule Part I	<p>(c) by deleting the tariff description together with the rates of export levy corresponding to tariff number “4102.29.00” and substituting therefor the following–</p> <table> <tr> <th>Tariff No.</th><th>Tariff Description</th><th>Export Levy Rate</th></tr> <tr> <td>4102.29.00</td><td>Other raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), without wool on, whether or not split, other than those excluded by Note (c), to Chapter 41</td><td>50% or USD 0.32 whichever is higher</td></tr> </table> <p>(d) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4103.20.00 and substituting therefor the expression “50% or USD 0.32 whichever is higher”;</p> <p>(e) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4103.30.00 and substituting therefor the expression “50% or USD 0.32 whichever is higher”;</p> <p>(f) by deleting expression “80% or USD 0.55/kg” appearing in tariff no. 4103.90.00 and substituting therefor the expression “50% or USD 0.32 whichever is higher”;</p>	Tariff No.	Tariff Description	Export Levy Rate	4102.29.00	Other raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), without wool on, whether or not split, other than those excluded by Note (c), to Chapter 41	50% or USD 0.32 whichever is higher	<p>The amendment seeks to reduce the export levy rates for goods under this category from the higher of “ <b>80% or USD 0.52</b>” to the higher of “ <b>50% or USD 0.32</b>”.</p> <p>This amendment reduces the export levy rates seeking to encourage the exportation of products manufactured in Kenya.</p> <p>The reduced rates are intended to spur the growth in various industries by tapping into export markets.</p>
Tariff No.	Tariff Description	Export Levy Rate						
4102.29.00	Other raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), without wool on, whether or not split, other than those excluded by Note (c), to Chapter 41	50% or USD 0.32 whichever is higher						

# MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Points to Note
First Schedule Part I	<p>(g) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4104.19.00 and substituting therefor the expression “50% or USD 0.32 whichever is higher”;</p> <p>(h) by deleting tariff number “4101.40.00” together with the corresponding tariff description and rate of export levy;</p> <p>(i) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4101.50.00 and substituting therefor the expression “50% or USD 0.32 whichever is higher”;</p> <p>(j) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4301.60.00 and substituting therefor the expression “50% or USD 0.32 whichever is higher”;</p> <p>(k) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4301.30.00 and substituting therefor the expression “50% or USD 0.32 whichever is higher”;</p> <p>(l) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4302.30.00 and substituting therefor the expression “50% or USD 0.32 whichever is higher”;</p> <p>(m) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4101.90.00 and substituting therefor the expression “50% or USD 0.32 whichever is higher”;</p> <p>(n) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4102.10.00 and substituting therefor the expression “50% or USD 0.32 whichever is higher”;</p>	<p>The amendment seeks to reduce the export levy rates for goods under this category from the higher of “ <b>80% or USD 0.55/kg</b>” to the higher of “ <b>50% or USD 0.32</b>”.</p> <p>This amendment reduces the export levy rates seeking to encourage the exportation of products manufactured in Kenya.</p> <p>The reduced rates are intended to spur the growth in various industries by tapping into export markets.</p>

# MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Points to Note
First Schedule Part I	<p>(o) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4301.10.00 and substituting therefor the expression “50% or USD 0.32 whichever is higher”;</p> <p>(p) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4301.80.00 and substituting therefor the expression “50% or USD 0.32 whichever is higher”;</p> <p>(q) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4301.90.00 and substituting therefor the expression “50% or USD 0.32 whichever is higher”;</p> <p>(r) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4302.11.00 and substituting therefor the expression “50% or USD 0.32/kg whichever is higher”</p> <p>(s) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4302.19.00 and substituting therefor the expression “50% or USD 0.32/kg whichever is higher”</p> <p>(t) by deleting the expression “80% or USD 0.55/kg” appearing in tariff no. 4302.20.00 and substituting therefor the expression “50% or USD 0.32/kg whichever is higher”</p>	<p>The amendment seeks to reduce the export levy rates for goods under this category from the higher of “ <b>80% or USD 0.55/kg</b>” to the higher of “ <b>50% or USD 0.32</b>”.</p> <p>This amendment reduces the export levy rates seeking to encourage the exportation of products manufactured in Kenya.</p> <p>The reduced rates are intended to spur the growth in various industries by tapping into export markets.</p>

# MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Points to Note
First Schedule Part I	<p>(u) by deleting tariff number “8002.00.10” and substituting therefor the tariff number “8002.00.00”;</p> <p>(v) by deleting tariff number “8105.00.00” together with the corresponding tariff description and rate of export levy;</p> <p>(w) by deleting tariff number “8107.30.00” appearing in the first column and substituting therefor tariff number “8112.61.00”;</p> <p>(x) by deleting tariff number “8109.30.00” together with the corresponding tariff description and rate of export levy;</p> <p>(y) by deleting tariff number “8110.20.20” appearing in the first column and substituting therefor tariff number “8110.20.00”;</p> <p>(z) by deleting the tariff description together with the rate of export levy corresponding to tariff number “4101.40.00”;</p>	The amendments create alignment.

# MISCELLANEOUS FEES AND LEVIES ACT

Provision in the Legislation	Amendment	Points to Note																		
First Schedule Part I	<p>(aa) by inserting the following new tariff numbers together with corresponding tariff descriptions and rates of export levy in proper sequence –</p> <table> <tr> <th>Tariff No.</th><th>Tariff Description</th><th>Export Levy Rate</th></tr> <tr> <td>8106.10.00</td><td>Bismuth and articles thereof including waste and scrap containing more than 99.99% of bismuth, by weight</td><td>20%</td></tr> <tr> <td>8106.90.00</td><td>Other bismuth and articles thereof including waste and scrap</td><td>20%</td></tr> <tr> <td>8105</td><td>Cobalt mattes and other intermediate products of cobalt metallurgy; cobalt and articles thereof, including waste and scrap</td><td>20%</td></tr> <tr> <td>8109.31.00</td><td>Waste and scrap of zirconium containing less than 1 part hafnium to 500 parts zirconium by weight</td><td>20%</td></tr> <tr> <td>1703</td><td>Molasses resulting from the extraction or refining of sugar</td><td>20% of the customs value</td></tr> </table>	Tariff No.	Tariff Description	Export Levy Rate	8106.10.00	Bismuth and articles thereof including waste and scrap containing more than 99.99% of bismuth, by weight	20%	8106.90.00	Other bismuth and articles thereof including waste and scrap	20%	8105	Cobalt mattes and other intermediate products of cobalt metallurgy; cobalt and articles thereof, including waste and scrap	20%	8109.31.00	Waste and scrap of zirconium containing less than 1 part hafnium to 500 parts zirconium by weight	20%	1703	Molasses resulting from the extraction or refining of sugar	20% of the customs value	<p>The amendment seeks to impose export levy on additional items.</p> <p>By imposing export levy on these items, the Government seeks to limit exportation of such raw materials and increase the availability of these goods in the local market, to spur growth of the local manufacturing industries.</p>
Tariff No.	Tariff Description	Export Levy Rate																		
8106.10.00	Bismuth and articles thereof including waste and scrap containing more than 99.99% of bismuth, by weight	20%																		
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1703	Molasses resulting from the extraction or refining of sugar	20% of the customs value																		



# MISCELLANEOUS FEES AND LEVIES ACT

Provision in Legislation	Amendment	Point to Note
Second Schedule Part A	<p>The Second Schedule to the Miscellaneous Fees and Levies Act, 2016, is amended –</p> <p>(a) in part A –</p> <p>(i) by deleting paragraph (x) and substituting therefor the following new paragraph –</p> <p style="padding-left: 40px;">(x) goods for official use by diplomatic and consular missions, the United Nations and its agencies, and institutions or organizations exempted under the Privileges and Immunities Act;</p> <p>(ii) by deleting paragraph (xv) and substituting therefor the following new paragraph –</p> <p style="padding-left: 40px;">(xv) All goods and parts thereof of Chapter 88.</p> <p>(iii) by inserting the words “All goods including material supplies” at the beginning of paragraph (xxv);</p> <p>(iv) by inserting the following new paragraphs immediately after (xxv) –</p> <p style="padding-left: 40px;">xva) any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation.</p> <p style="padding-left: 40px;">xvb) any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation.</p> <p>(v) in paragraph (xxvc) (b) by inserting the words “or other manufacturing activities including refining” immediately after the words “human vaccines”;</p>	<p>The amendments will increase the categories of goods that are exempted from IDF, for specific goods and institutions.</p>

## MISCELLANEOUS FEES AND LEVIES ACT

Provision in Legislation	Amendment	Point to Note
Second Schedule Part A	<p>(iv) by inserting the following new paragraphs immediately after (xxvi) –</p> <p>(xxvii) goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya; and</p> <p>(xxviii) liquified petroleum gas.</p> <p>(xxix) the supply of denatured ethanol of tariff number 2207.20.00;</p> <p>(xxx) bioethanol vapour (BEV) stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel).</p>	The amendments will increase the categories of goods that are exempted from IDF, for specific goods and institutions.

# MISCELLANEOUS FEES AND LEVIES ACT

Provision in Legislation	Amendment	Point to Note
Second Schedule Part B	<p>(b) In Part B –</p> <p>(i) by deleting paragraph (ii) and substituting therefor the following new paragraph –</p> <p>(ii) goods imported for official use by diplomatic and consular missions, United Nations and its agencies, and institutions or organizations exempted under the Privileges and Immunities Act:</p> <p>(ii) by deleting paragraph (iii);</p> <p>(ii) in paragraph (viii)(b), by inserting the words “or other manufacturing activities including refining” immediately after the words “human vaccines”;</p> <p>(iv) by inserting the words “All goods including material supplies” at the beginning of paragraph (ix);</p> <p>(v) inserting the following new paragraphs immediately after paragraph (x) –</p> <p>(xi) goods imported for official use by international and regional organizations that have bilateral and multilateral agreements with Kenya;</p> <p>(xii) liquified petroleum gas; and</p> <p>(xiii) all goods and parts thereof of Chapter 88.</p> <p>(xiv) the supply of denatured ethanol of tariff number 2207.20.00;</p> <p>(xv) bioethanol vapour (BEV) stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel);</p> <p>(xvi) any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation;</p>	<p>The amendments will increase the categories of goods that are exempted from RDL, for specific goods and institutions.</p>

# MISCELLANEOUS FEES AND LEVIES ACT

Provision on the Legislation	Amendment	Point to Note																		
Third Schedule	<p>The Miscellaneous Fees and Levies Act, 2016, is amended by inserting the following new schedule immediately after the Second Schedule –</p> <table> <tr> <th>Tariff No.</th><th>Tariff Description</th><th>Export and Investment Promotions Levy Rate</th></tr> <tr> <td>2523.10.00</td><td>Cement Clinkers</td><td>17.5% of the customs value</td></tr> <tr> <td>7207.11.00</td><td>Semi-finished products of iron or non-alloy steel containing, by weight, &lt;0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness</td><td>17.5% of the customs value</td></tr> <tr> <td>7213.91.10</td><td>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 8mm</td><td>117.5% of the customs value</td></tr> <tr> <td>7213.91.90</td><td>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</td><td>17.5% of the customs value</td></tr> <tr> <td>4804.11.00</td><td>Uncoated kraft paper and paperboard, in rolls or sheets; Kraft liner; Unbleached</td><td>10% of the customs value</td></tr> </table>	Tariff No.	Tariff Description	Export and Investment Promotions Levy Rate	2523.10.00	Cement Clinkers	17.5% of the customs value	7207.11.00	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	17.5% of the customs value	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 of cross section measuring less than 8mm	117.5% of the customs value	7213.91.90	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	17.5% of the customs value	4804.11.00	Uncoated kraft paper and paperboard, in rolls or sheets; Kraft liner; Unbleached	10% of the customs value	<p>This amendment introduces a Third Schedule to provide the rates of the export and investments promotion levy, as introduced by Subsection 7A.</p> <p><b>Effective date 1 September 2023.</b></p>
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# MISCELLANEOUS FEES AND LEVIES ACT

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## MISCELLANEOUS ACTS

**The Betting, Gaming and Lotteries Act,  
The Kenya Roads Board Act,  
The Kenya Revenue Authority Act,  
The Employment Act,  
The Alcoholics Drinks Act, 2010  
The Unclaimed Financial Assets Act,  
The Statutory Instruments Act,  
The Retirements Benefits (Deputy President and Designated State Officers)  
Act,  
The Special Economics Zones Act,  
The Export Processing Zones Act.**

**The proposed changes are effective on 1 July 2023, unless otherwise  
indicated**

# THE BETTING, GAMING AND LOTTERIES ACT

Provision in the Legislation	Amendment	Points to Note
Section 69AA	<p>The Betting, Gaming and Lotteries Act is amended by inserting the following new section immediately after Section 69A—</p> <p>69AA. The taxes under sections 29A, 44A, 55A and 59B shall be collected in accordance with the provisions of the Tax Procedures Act, 2015.</p>	<p>The amendment seeks to align the collection of taxes under the Betting, Gaming and Lotteries Act to avoid ambiguity or confusion in relation to collection of taxes.</p>

# THE KENYA ROADS BOARD ACT

Provision in the Legislation	Amendment	Point to Note
Section 7	<p>Section 7 of the Kenya Roads Board Act, 1999 is amended in subsection (1) by-</p> <p>(a) deleting paragraph (g);</p> <p>(b) deleting the word “eight” appearing at the beginning of the paragraph and substituting therefor the word "five".</p>	The amendment seeks to reconstitute the membership of the Kenya Roads Board.
Section 35	<p>Section 35 of Kenya Roads Board Act is amended by inserting the following subsection immediately after subsection (2)-</p> <p>(2A) The annual estimate shall be submitted together with a collated annual roads programme as provided for in section 19.</p>	<p>The amendment seeks to ensure there is accountability and transparency in the management of Kenya Roads Boards.</p> <p>This amendment provides that the mandate of Kenya Roads Board includes the annual road programme in the submission of the revenue and expenditure to Parliament.</p>
First Schedule	<p>The First Schedule to the Kenya Roads Board Act, 1999 is amended by-</p> <p>(a) deleting paragraph 4;</p> <p>(b) deleting paragraph 5 and</p> <p>(c) deleting paragraph 6.</p>	The amendment seeks to reconstitute the membership of the Kenya Roads Board.



# THE KENYA REVENUE AUTHORITY ACT

Provision in the Legislation	Amendment	Point to Note
Section 5	Section 5 of the Kenya Revenue Act is amended in subsection (2A) by deleting the words "for the better carrying out of its functions" and substituting therefor the words "the staff of the Authority, general public and other jurisdictions."	<p>The amendment clarifies that KRA may establish an institution to provide capacity building and training for its staff, the public, and others. In training the public, KRA will create awareness of the various tax obligations that the public is required to honour.</p> <p>The inclusion of other jurisdictions provides an avenue for collaboration and cooperation with other revenue management bodies.</p> <p>The amendment requires the KRA to take active steps in conducting taxpayer education initiatives.</p>
Section 13	<p>Section 13 of the Kenya Revenue Authority Act, 1995, is amended –</p> <p>(a) in subsection (1) by inserting the words “and Deputy Commissioners” immediately after the word “Commissioners”;</p> <p>(b) by deleting subsection (2).</p>	The amendment clarifies how Deputy Commissioners will be appointed.
First Schedule	<p>The First Schedule to the Kenya Revenue Authority Act, 1995 is amended by inserting the following new item immediately after item 12-</p> <p>13. The Alcoholic Drinks Act, 2010</p>	<p>The amendment adds the Alcoholic Drinks Control Act into the First Schedule of the KRA Act.</p> <p>This amendment means that KRA shall administer and enforce the provisions of the Alcoholic Drinks Act, going forward, for the purpose of assessing, collecting and accounting for revenue.</p>

# THE RETIREMENT BENEFITS ACT

Provision in the Legislation	Amendment	Point to Note
Section 25B	Section 25B of the Retirement Benefits Act, 1997 is amended in subsection (1) by deleting the words “sixty per cent” appearing in paragraph (eb) and substituting therefor the words “thirty three percent”.	The amendment seeks to lower local shareholding requirement from sixty to thirty three percent for administrators of Retirement Benefit Schemes established in Kenya.
Section 38	<p>Section 38 of the Retirement Benefits Act, 1997 is amended by inserting the following new subsection immediately after subsection (1)-</p> <p>(1A) Subject to subsection (1) (b), where a fund is set up exclusively for the purpose of investing sharia complaint funds, the fund shall be exempted from the guidelines.</p>	The amendment seeks to exclude the funds set up exclusively for the purposes of investing in sharia compliant funds from the guidelines prescribed for the restriction on the use of scheme funds.

Provision in the Legislation	Amendment	Point to Note
Section 31(B)	<p>The Employment Act, 2007, is amended by inserting the following new sections immediately after section 31A-</p> <p>31B.(1)Notwithstanding the provisions of section 3(2) (a), (b), (c) and (d) of the Act, each employee and employer shall pay a monthly levy to be known as the Affordable Housing Levy.</p> <p>(2) The purpose of the Affordable Housing Levy shall be to provide funds for the development of affordable housing and associated social and physical infrastructure as well as the provision of affordable home financing to Kenyans.</p> <p>(3) The Affordable Housing Levy shall not be used for any other purpose other than the development of affordable housing and associated social and physical infrastructure as well as the provision of affordable home financing to Kenyans.</p> <p>(4) The monthly levy payable by the employer and employee shall be –</p> <p>(a) one point five per centum of the employee’s gross monthly salary for the employee;</p> <p>(b) one point five per centum of the employee’s monthly gross salary or the employer.</p>	<p>The amendment seeks to support the Government’s commitment to provide affordable housing.</p> <p>The amendment makes it mandatory for both employers and employees to pay a monthly levy to be known as the “<i>affordable housing levy</i>.”</p> <p>The affordable housing levy shall not be used for any other purpose other than development of affordable housing and associated infrastructure.</p> <p>The monthly levy payable by both the employer and employee shall be 1.5% of the employee’s gross monthly salary.</p> <p>Unlike the proposal in the Finance Bill, which proposed a cap of KShs.5,000 for contributions by the employer and employee, the amendment does not limit the contribution amount. Consequently, the amendment will overburden employees as well as employers, increasing the cost of several statutory costs of employment.</p>

# THE EMPLOYMENT ACT

Provision in the Legislation	Amendment	Point to Note
Section 31(C)	<p>31C. (1) An employer shall—</p> <p>(a) deduct an employee's monthly payment from the employee's gross monthly salary;</p> <p>(b) set aside the employer's monthly payment for each employee; and</p> <p>(c) not later than nine working days after the end of the month in which the payments are due, remit an amount comprising the employee and the employer's payment.</p> <p>(2) An employer who fails to comply with this section shall be liable to payment of a penalty equivalent to two per cent of the unpaid funds for every month the same remains unpaid.</p>	<p>The amendment imposes an obligation on the employer to deduct an employee's monthly payment and set aside their monthly payment for each employee they have.</p> <p>The due date for payment is the same as the date for remittance of Pay As You Earn tax (the 9th day of the subsequent month).</p> <p>An employer who fails to deduct and remit the monthly payment shall be liable to pay a penalty of 2% of the unpaid fund for every month the same remains unpaid.</p>

# THE ALCOHOLICS DRINKS ACT, 2010

Provision in the Legislation	Amendment	Point to Note
Section 2	<p>Section 2 of the Alcoholic Drinks Act, 2010, is amended by inserting the following definition in its proper alphabetical sequence–</p> <p>“minimum input cost” means input cost published by Kenya Revenue authority through excise regulations.</p>	<p>The amendments aim to combat the smuggling of illicit alcoholic drinks in the Kenyan market, which are sold below market price.</p>
Section 31	<p>Section 31 of the Alcoholic Drinks Control Act, 2010, is amended in subsection (2) by inserting the following new paragraph immediately after paragraph (b)-</p> <p>(c) a person shall not sell, manufacture, pack or distribute alcoholic drinks at a price below the minimum input cost.</p>	

# THE UNCLAIMED FINANCIAL ASSETS ACT

Provision in the Legislation	Amendment	Point to Note
Section 28	Section 28 of the Unclaimed Financial Assets Act, 2011, is amended in sub-section (5), by inserting the words "or such other person as the claimant may designate" immediately after the word "claimant".	<p>The amendment seeks to allow designate representatives of the claimant to receive assets and cash following a successful claim to the Unclaimed Financial Assets Authority.</p> <p>This is a welcome move from the Government.</p>

# STATUTORY INSTRUMENTS ACT, 2013

Provision in the Legislation	Amendment	Point to Note
Section 20	The Statutory Instruments Act, 2013 is amended by deleting the heading to Part V and substituting therefor the following new heading —  “PART V – PURPOSE FOR REVIEW OF STATUTORY INSTRUMENTS”	The amendment removes the mandatory requirement for the review of subsidiary legislation and the expiration of statutory instruments to align the Statutory Instruments Act with the Revision of Laws Act.
Section 21	The Statutory Instruments Act is amended by repealing section 21.	<p>The amendment deletes the mandatory provisions of the Statutory Instruments Act that require continuous review of statutory instruments by regulatory authorities and agencies and removes the automatic revocation of statutory instruments ten years after their enactment.</p> <p>This is a welcome move which will allow for express changes in law to follow the legislative process, as opposed to automatic revocation or expiration of laws.</p>

# THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND STATE OFFICERS) ACT

Provision in the Legislation	Amendment	Point to Note
Section 4	The Retirement Benefits (Deputy President and State Officers) Act, 2015 is amended by repealing section 4—	The Amendment repeals section 4 which was declared unconstitutional by the Court.
Section 4A	<p>The Retirement Benefits (Deputy President and State Officers) Act is amended by inserting the following new sections immediately after section 4 –</p> <p>4A. (1) A person who-</p> <p>(a) holds an appointive or elective office in the Government; and</p> <p>(b) previously held a position to which pension and other benefits accrue under this Act, shall, upon retirement or ceasing to hold that office entitled under this Act, be paid-</p> <p>(i) a monthly pension equal to eight per cent of the monthly salary of the entitled person's last monthly salary while in office; and</p> <p>(ii) a lumpsum payment on retirement as calculated as a sum equal to one year's salary paid for each term served in office.</p> <p>(2) In order to avoid duplication of other benefits, an entitled person who holds an appointive or elective position in or under Government shall not be entitled to other benefits under this Ac, until they retire or cease to hold that appointive or elective office.</p> <p>(3) For the purposes of subsection (2), other benefits means the benefits under paragraphs (c), (d), (e), (f), and (g) of sections 5(1), 5A, 5B, 6 and 7.</p> <p>4B. A person, who holds an appointive or elective position for which benefits under this Act applies and is entitled to pension under the Parliamentary Pensions Act, shall in addition to the benefits and pensions payable under this Act, be paid pension under Section 8 of the Parliamentary Pensions Act.</p>	<p>The amendment makes provision for the payment of pension to entitled persons who hold and appointive or elective position in Government.</p> <p>The amendment protects right to access retirement benefits accrued to an entitled person and allows them to access both the benefits under the Act and those payable under the Parliamentary Pensions Act.</p>



# THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND DESIGNATED STATE OFFICERS) ACT

Provision in the Legislation	Amendment	Point to Note
Section 5	<p>Section 5 of the Retirement Benefits (Deputy President and Designated State Officers) Act is amended -</p> <p>(a) in subsection (1) (f) by deleting the words "and the entitled person's spouse" and substituting therefor the words, "the entitled person's spouse and the entitled person's child who is below eighteen or is under twenty- five years of age and is undergoing a course of full time education and in the case of a female child is not married or is not cohabiting with any persons".</p> <p>(b) by deleting subsection (2).</p>	<p>The amendment could be declared unconstitutional if challenged in court. Article 27 of the Constitution of Kenya, provides for equality and freedom from discrimination.</p> <p>As drafted, it is discriminatory against male children, and female children who are married or cohabiting with someone.</p>

# THE RETIREMENT BENEFITS (DEPUTY PRESIDENT AND DESIGNATED STATE OFFICERS) ACT

Provision in the Legislation	Amendment	Point to Note
Section 5A Section 5B Section 6 Section 7	Section 5A , 5b, 6 and 7 the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 is amended in paragraph (f) of each section by deleting the words “and the entitled person’s spouse” and substituting therefor the words, “the entitled person’s spouse and the entitled person’s child who is below eighteen years or is under twenty-five years of age and is undergoing a course of full-time education, and in the case of a female child is not married or is not cohabiting with any person;”	<p>The amendment could be declared unconstitutional if challenged in court. Article 27 of the Constitution of Kenya, provides for equality and freedom from discrimination.</p> <p>As drafted, it is discriminatory against male children, and female children who are married or cohabiting with someone.</p>

# THE RETIREMENT BENEFIT( DEPUTY PRESIDENT & DESIGNATED STATE OFFICERS) ACT

Provision in the Legislation	Amendment	Point to Note
The First Schedule	<p>The First Schedule to the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 is amended-</p> <p>(a) in paragraph (b) by inserting the words “or one chief liaison officer” immediately after the words “one personal assistant”; and</p> <p>(b) in paragraph (c) by inserting the words “or one assistant liaison officer” immediately after the words “one secretary.”</p>	<p>This amendment increases additional retirement benefits for a retired speaker of the national assembly or the senate, the deputy chief justice or the chief justice.</p>

# THE RETIREMENT BENEFIT( DEPUTY PRESIDENT & DESIGNATED STATE OFFICERS) ACT

Provision in the Legislation	Amendment	Point to Note
Section 13	<p>Section 13 of the Retirement Benefits (Deputy President &amp; Designated State Officers) Act, 2015 is amended by inserting the following new sub-section immediately after sub-section (1C) -</p> <p>(1D) The Clerk of the National Assembly in the case of a retired Speaker of the National Assembly and the Clerk of the Senate in the case of a retired Speaker of the Senate, shall prepare and submit the estimates under sub-subsection (1)(b) to the Parliamentary Service Commission.</p>	<p>The amendment requires the respective clerks of the National Assembly and Senate to prepare and submit estimates of the benefits granted to an entitled person and submit the same to the Parliamentary Service Commission.</p>

# THE RETIREMENT BENEFIT (DEPUTY PRESIDENT & DESIGNATED STATE OFFICERS) ACT

Provision in the Legislation	Amendment	Point to Note
Section 16	Section 16 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015, is repealed.	This proposed amendment seeks to streamline the computation of benefits with the amendment of Section 4B of the Act and the Parliamentary Pensions Act.

# THE SPECIAL ECONOMIC ZONES ACT

Provision in the Legislation	Amendment	Point to Note
Section 4(4)	<p>Section 4 of the Special Economic Zones Act, 2015, is amended by deleting subsection 4 and substituting therefor the following new subsection –</p> <p>(4) A special economic zone shall be a designated geographical area which may include both customs controlled area and non-customs controlled area where business enabling policies, integrated land uses and sector-appropriate onsite and off-site infrastructure and utilities shall be provided, or which has the potential to be developed, whether on a public, private or public-private partnership basis, where development of zone infrastructure and goods introduced in customs-controlled area are exempted from customs duties in accordance with customs laws.</p>	<p>The amendment provides that a special economic zone may include both a customs-controlled area and non-customs-controlled area, allowing for the operation of both SEZ and non-SEZ entities to be domiciled in a special economic zone.</p> <p>This is a welcome move, which will allow for the uptake of occupancy in SEZ zones.</p>

# THE SPECIAL ECONOMIC ZONES ACT

Provision in the Legislation	Amendment	Point to Note
Section 6	<p>Section 6 of the Special Economic Zones Act, 2015, is amended in paragraph (b) by —</p> <p>(a) deleting the word “Kenya” and substituting therefor the words “the customs territory”;</p> <p>(b) inserting the following proviso—</p> <p>Provided that —</p> <p>(i) goods whose content originates from the customs territory shall be exempt from payment of import duties.</p> <p>(ii) goods whose content partially originates from the customs territory shall pay import duties on the non-originating component subject to the customs procedures.</p>	<p>The amendment gives clarity on the exemption from import duty for goods originating from the customs territory to the SEZ and the payment of import duties on goods, where the goods are partially comprised of components from outside the customs territory.</p> <p>This is a welcome move which will allow increased market access to the domestic market.</p>

# THE EXPORT PROCESSING ZONES ACT

Provision in the Legislation	Amendment	Point to Note
Section 24	<p>Section 24 of the Export Processing Zones Act, 1990, is amended by inserting the following proviso at the end of paragraph (b) –</p> <p>Provided that –</p> <p>(i) goods whose content originates from the customs territory shall be exempt from payment of import duties; and</p> <p>(ii) goods whose content partially originates from the customs territory shall pay import duties on the non-originating component subject to customs procedures.</p>	<p>The amendment gives clarity on the exemption from import duty for goods originating from the customs territory to the EPZ and the payment of import duties on goods, where the goods are partially comprised of components from outside the customs territory.</p> <p>This is a welcome move which will allow increased market access to the domestic market.</p>