



Analysis of the Finance Bill, 2024

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INCOME TAX

Definition of related persons.

The Finance Bill, 2024 (the **Bill**) proposes to delete the definition of 'related persons' under the Eighth Schedule and section 18 (6) of the Income Tax Act and restates the definition under section 2 of the Income Tax Act (the **Act**). The Bill proposes to amend the Eighth Schedule by deleting the definition of "related persons."

Implications

This amendment seeks to avoid the duplication of definitions of "related persons" in the Act which may give rise to confusion in interpretation.

Proposed Effective Date 1 July 2024

Definition of royalty

The Bill proposes to amend the definition of royalty to include '*any software, proprietary or off the shelf whether in the form of licence, development, training, maintenance or support fees and include the distribution of the software*'.

Implications

The Bill proposes to tax the purchase of software whether by licence or otherwise as acquisition of royalty. This approach goes against International Best Practice as envisaged under the Organization for Economic Co-operation and Development Model Tax Convention on Income and on Capital which recognizes that software distributors make payment for copyrighted software but do not commercially exploit such software. This provision, if adopted will present an interesting divergence from the decision of the High Court in **Seven Seas Technologies Limited v the Commissioner of Domestic Taxes** which held that in order for a software-related payment to amount to a royalty that is subject to withholding tax, the payer must have acquired any or all of the rights that enable them to commercially exploit the software as envisaged under section 26 of the Copyright Act. These rights include the exclusive right to reproduce the software in any material form and the exclusive right to translate or adapt the software.

Proposed Effective Date 1 July 2024

Definition of donation

The Bill proposes to introduce the definition of donations to mean a benefit in money in any form, promissory note or a benefit in kind conferred by a person without any consideration.

Implications

Under the Income Tax Act, donations made to charitable organizations exempt from income tax under paragraph 10 of the First Schedule are allowable deductions in determining the income of a person making the donations. The Income Tax (Charitable Donations) Regulations 2007 enacted to implement the Income Tax provision define cash donation to include donation given in form of a cheque. If the proposed definition is adopted into law, a benefit in the form of promissory note or a benefit conferred in kind would be deemed a donation. The proposal will provide clarity on the scope of donations that are allowable for tax purposes.

In addition, if the proposed amendment is passed into law, the definition provided under the Income Tax (Charitable Donations) Regulations, 2007 should be amended to include the specified forms of donation to ensure correct tax treatment of the various forms of donations.

Proposed Effective date: 1 July 2024

Deferment of foreign exchange loss or gain

The Bill proposes to limit the period within which a person can defer and claim a foreign exchange loss from five years to three years from the date the loss is realized. Currently, the Income Tax Act provides that the realized foreign exchange loss for a company, whose gross interest paid or payable to a non-resident person exceeds thirty per cent of the company's earnings before interest, taxes, depreciation and amortization (EBITDA) in any financial year, is to be deferred and claimed over a period not exceeding five years from the date the loss is realized.

Implications

This proposal comes barely a year after the Finance Act 2023 capped the deferment and claim of foreign exchange losses to five years. If passed, this will negatively affect taxpayers who are not able to claim foreign exchange losses within the three-year period. Further, this annual change in laws and especially provisions that have only been in force for a short period creates uncertainty within the Kenyan tax regime and further impacts the ease of doing business in Kenya.

Proposed Effective Date: 1 July 2024

Imposition of withholding tax on payments made for the supply of goods to a public entity

The Bill proposes to subject to withholding tax any payments made to a person for the supply of goods to a public entity. The requirement to deduct withholding tax shall apply whether the payment is made to a resident person or a non-resident person without a permanent establishment. The public entity shall deduct withholding tax at the rate of three percent (3%) of the payment made if the payment is to a resident person and five percent (5%) if the payment is to a non-resident person. In relation to a non-resident person, the withholding tax shall be a final tax. The income shall be deemed to be the person's income for the year in which the payment is received.

A public entity is defined to mean a ministry, state department, state corporation, county department, or agency of the national or county Government.

Implications

The provision is a measure by the Government to ensure that persons who supply goods to the government also pay tax on the income earned from such supplies. There are many instances where supplies of goods by local persons to Government bodies are paid for, but such persons do not account for tax on the payment received. With the introduction of a withholding tax on payment for goods, it will now be possible for the suppliers to be tracked through iTax as the tax withheld will appear on their ledgers. However, this is likely to face strong opposition by some suppliers who would argue that the amount withheld by the government amounts to all or a significant part of their profit especially where the goods involved have a low profit margin.

In addition, non-resident suppliers of goods will likely increase the cost of such goods since the withholding tax deducted in Kenya may not be recoverable in their home countries, and further, it is unlikely that the concerned Government bodies will gross up their payments to account for the withholding tax.

Proposed Effective Date: 1 July 2024

Increase of nontaxable benefits

The Bill seeks to increase the non-taxable benefits of employment as follows:

Amend the non-taxable daily limit of an allowance paid to an employee working outside his usual place of work. The Bill proposes that employers should have a policy on the payment and accounting for subsistence, travelling, entertainment or other allowance with an amount not exceeding five percent (5%) of the monthly gross earnings of the employee. The current non - taxable daily limit of the allowance is capped at two thousand shillings;

Amend the limit of non-taxable benefits granted with respect to employment from thirty-six thousand shillings to forty-eight thousand shillings; and review the value of meals provided to employees in a canteen or cafeteria operated or established by an employer from forty-eight thousand shillings to sixty thousand shillings.

Implications

This proposal is welcomed as it seeks to address the concerns around the cost of living. There have been discussions that the limit set for subsistence and travelling allowance is low especially for persons who travel outside Kenya to countries with a high cost of living. The introduction of a cap based on a person's income is also a positive amendment as it recognizes the compensation of persons at different levels of employment.

In addition, the amendment to increase the nontaxable benefits granted to employees is welcomed as it complements the increasing cost of living and gives employers avenues to provide attractive employment packages to their employees.

Proposed effective Date: 1 July 2024

Increase in the limit of tax-deductible pension contributions made to registered funds

The Bill proposes to increase the limit of tax-deductible contributions made by employees to registered pension schemes and provident funds from Kenya Shillings twenty thousand (KES 20,000) a month to Kenya Shillings thirty thousand (KES 30,000) a month. The ability to deduct such contributions in the computation of taxable income makes the pension contributions tax free. Therefore, going forward, the tax-exempt contributions made by an employee shall be the lesser of:

- (a) the sum of the contributions made by an employee to the registered fund; or

- (b) thirty percent of the employee's pensionable income in the year; or
- (c) three hundred and sixty thousand in a year or thirty thousand shillings a month.

Any amount by which an employee's pension contribution exceeds the above criteria shall not be deductible in computing the employee's taxable income and therefore shall be subjected to income tax.

In addition, where the sum of both an employee and employer's contribution exceed Kenya Shillings thirty thousand (KES 30,000) in a month, the entire employer's contribution shall be non-deductible in computing the employer's income tax liability.

Implications

This is a welcome change as it seeks to adjust upwards the tax-free contribution limits that have remained unchanged since the year 2005. It is therefore our view that this is an overdue amendment that recognizes the fact that the limits set nineteen (19) years ago need to be adjusted for inflation and to reflect the fact that incomes have also changed over the past two decades.

We also note that this proposal aligns with the Government's policy of encouraging Kenyans to increase their retirement savings. This proposal will likely result in an increase in the pension contributions as employees take advantage of the increased tax-free pension contribution amounts.

Proposed Effective Date: 1 July 2024

Increase in limit of tax-deductible contributions made persons who are not members of a registered fund or a public pension scheme

The Bill seeks to increase the limit of tax-deductible contributions made by individuals who are not members of a registered fund or a public pension scheme from Kenya Shillings twenty thousand (KES 20,000) a month to Kenya Shillings thirty thousand (KES 30,000) a month. The ability to deduct such contributions in the computation of taxable income makes the pension contributions tax free. Therefore, going forward, the tax-exempt contributions made by an individual will be the lesser of:

- (1) the sum of the contributions made by the individual or by the employer in the year; or
- (2) thirty percent of the individual's pensionable income in the year; or

(3) three hundred and sixty thousand in a year or thirty thousand shillings a month reduced by an amount paid by the individual or by an employer on his behalf to the National Social Security Fund in that particular year.

Implications

As mentioned above, this is a welcome change that seeks to enhance contributions to registered pension funds. In addition, this amendment seeks to ensure that individuals who are self-employed or who are not members of a registered pension scheme also enjoy the enhanced limits as they contribute to individual retirement funds.

Proposed Effective Date: 01 July 2024

Taxation of income earned from a digital marketplace or platform

The Bill proposes to deem income paid out to a resident or non-resident person by an owner or operator of a digital marketplace or platform with respect to digital content monetization (defined to include creative works, creating or sharing of any other material other than exempt material), goods, property or services to be income accrued in or derived from Kenya.

A platform is defined as a digital platform or website that facilitates the exchange of a short-term engagement, freelance or provision of a service between a service provider who is an independent contractor or freelancer and a client or customer.

Having deemed such income to be accrued or derived from Kenya, the Bill then proposes to require that owners and operators of digital marketplace or platforms withhold five percent (5%) of the payment made to a resident person and twenty percent (20%) where payments are made to a non-resident person.

Implications

This proposal though well intentioned, is likely to face resistance especially by non-resident persons who may not derive any income from Kenya but would be required to deduct withholding tax at the rate of five percent (5%) when making or facilitating a payment to a resident person. To such non-resident persons, this would be an additional compliance burden.

In addition, the Bill as drafted would also require non-resident owners and operators of digital marketplaces or platforms to deduct withholding tax when making payments to non-residents. This would mean that two non-resident persons would be subject to tax Kenya. We note that there may be concerns as to whether such income is taxable in Kenya taking into account the international principles of taxation.

Proposed Effective Date: 01 July 2024

Digital Service Tax provision repealed and introduction of significant economic presence tax

The Bill proposes to repeal the provisions on digital service tax and introduce a tax known as significant economic presence tax. The significant economic presence tax will be payable by a non-resident person whose income from the provision of services is derived from or accrued in Kenya through a business carried out over a digital marketplace at the rate of thirty percent (30%) of the deemed taxable profit. The deemed taxable profit will be twenty percent (20%) of the gross turnover earned by the non-resident person.

The Bill excludes the following non-resident persons from the liability to account for significant economic tax: (a) a non-resident person who offers services through a permanent establishment or (b) a non-resident person who carries on in Kenya the business of transmitting messages by cables, radio, optical fibre, television broadcasting, internet, satellite, or other similar methods of communication or (c) income subject to withholding taxes.

The significant economic presence tax is due to the KRA on or before 20th day of the month following the end of the month in which the service was offered.

The Bill proposes to amend the definition of digital marketplace to include the following services provided online or through an electronic platform: ride-hailing services, food delivery services, freelance services, professional services, rental services, task-based services and any other service that is not exempt from tax under the Act.

Implications

As currently drafted, the proposed significant economic presence tax is largely similar in its application to the digital service tax that it seeks to replace. This is because the significant economic presence tax still seeks to tax the income accruing from the provision of services through a digital marketplace. The key difference is that the tax burden for non-residents under the significant economic presence tax will be significantly higher at the rate of six percent (6%) of the gross revenue

as opposed to the current digital service tax that currently applies at the rate of one point five percent (1.5%) of the gross revenue. This increase in the tax rate is likely to face challenge from the non-resident digital service providers.

In addition, we would mention that the significant economic presence tax is not a new concept as it has already been introduced in Nigeria and India. In both countries, the scope of the income subject to significant economic presence tax is wider to include the income earned from the sale of goods through a digital marketplace in the case of India and to also include income earned from the provision of professional and consultancy services in the case of Nigeria.

It is also anticipated that in line with what is happening in other countries in which this tax exists, the scope of the significant economic tax in Kenya may be expanded going forward.

Proposed Effective Date: 01 January 2025

Introduction of minimum top up tax

The Bill seeks to introduce a minimum top up tax which is payable by a covered person where the combined effective tax rate in respect of that person for a year of income is less than fifteen percent (15%).

The effective tax rate for a covered person shall be determined as follows:

Effective tax rate = (sum of all the adjusted taxes/ sum of all net income or loss for the year of income)*100%

The amount of tax payable shall be determined as follows:

The amount of tax payable = (15% of the net income or loss for the year of income of a covered person less the combined effective tax rate for the year of income) multiplied by the excess profit of the covered persons.

Covered persons means a resident person with a permanent establishment in Kenya who is a member of a multinational group and the group has a consolidated turnover of Euros seven hundred and fifty million (EUR 750,000,000) or more in the consolidated financial statements of the ultimate parent entity in at least two of the four years of income immediately preceding the tested year of income

The following shall be exempt from minimum to up tax:

- a public entity not engaged in business;
- a person whose income is exempt from tax under paragraph 10 of the First Schedule;
- a pension fund and its assets;
- a real estate investments vehicle that is an ultimate parent entity;
- a non-operating investment holding company;
- an investment fund that is an ultimate parent entity;
- a sovereign wealth fund; or
- an intergovernmental or supranational organizations including wholly owned agency or organ of the intergovernmental or supranational organization.

Adjusted covered taxes means taxes recorded in the financial accounts of a constituent entity for the income, profits or share of the income or profits of a constituent entity where the constituent entity owns an interests, and includes taxes on distributed profits, deemed profit distributions under this Act subject to such adjustments as may be prescribed.

Net income or loss means the sum net income or loss for the year of income after deducting the sum of the losses of a covered person as determined under a recognised accounting standards in Kenya.

Excess profit means the net income or loss of a covered person for the year of income less:

- 10% for the employee costs; and
- 8% for the net book value of tangible assets:

Provided that the employee cost and book value of tangible assets may be adjusted as prescribed in regulations.

Implications

This proposal is based on the Global Anti-Base Erosion (**GloBE**) rules designed to ensure that Multinationals pay a minimum level of tax in each jurisdiction that they operate.

Proposed Effective Date: 01 January 2025

Introduction of motor vehicle tax

The Bill proposes to introduce a tax known as motor vehicle tax at the rate of one percent (1%) of the value of the motor vehicle. This tax will be payable on each motor vehicle at the time of issuance of insurance cover.

The Bill proposes that the insurer of the motor vehicle shall collect and remit motor vehicle tax within five working days after issuing a motor vehicle with insurance cover. An insurer who fails to collect and remit motor vehicle tax shall be liable to pay a penalty equivalent to fifty percent (50%) of the uncollected tax and the actual amount of the uncollected tax.

Motor vehicle tax will not be payable in respect of ambulances or motor vehicles owned by national government, county government, Kenya Defence Forces, National Police Services, National Intelligence Services or persons exempt from tax under the Privileges and immunities Act.

Implications

The proposal is aimed at expanding the tax base, and it would also bring some informal sectors which have historically been hard to tax sectors such as the public transport industry within the taxation regime. This proposal is in line with the government's Medium – Term Revenue Strategy to raise Government revenue.

However, from the Bill, it is not clear who will be responsible for conducting the valuation of the motor vehicles where the insurance cover taken is a third-party insurance cover. Ordinarily, no valuation is required for third party insurance covers and therefore insurers may either (a) pass the cost of having such a valuation done to the taxpayer, or (b) require that motor vehicle owners provide up to date valuation reports for their motor vehicles. However, in the latter's case, a question may arise as to who would be liable if the valuation of the motor vehicle is not deemed accurate.

In addition, this proposal will lead to an increased administrative and compliance burden for insurers who will be required to collect and remit the motor vehicle tax within five (5) working days after the issue of a motor vehicle insurance cover.

Proposed Effective Date: 01 July 2024

Diminution of value of any implement, utensil or similar article not captured in the Second Schedule to be deductible at 100%

The Bill seeks to introduce section 15 (2) (gb) of the Income Tax Act stating that any amount considered to be representing a diminution of value of any implement, utensil or similar article used in the production of income, for the entity but which is not covered by a deduction in the Second Schedule shall be subject to an allowable deduction from that year's income at a rate of a hundred percent (100%). Currently, the Income Tax Act does not contain a provision that allows for the deduction of diminution of value of any implement, utensil or similar article since section 15(2)(g) of the Income Tax Act which allowed for tax deduction on diminution in value of loose tools and utensils was deleted by the Finance Act, 2023.

Implications

If adopted, the provision will entitle entities to tax deductions with respect to machinery or other articles involved in the production of income but not covered by any of the investment deductions in the Second Schedule.

Proposed Effective Date: 01 July 2024

Contributions made to the Social Health Insurance Fund, post retirement medical fund and the affordable housing levy deductible for tax purposes.

The Bill proposes to include the following as allowable expenses in determining the taxable income of a person:

- contribution made to the Social Health Insurance Fund by every Kenyan household and a non-Kenyan resident, ordinarily residing in Kenya for a period exceeding twelve months;
- in the case of an employee, the amount deducted by an employer in accordance with the Affordable Housing Act, 2024; and
- contribution to post-retirement medical fund subject to a limit of ten thousand shillings per month.

Implications

If passed into law contributions made to the Social Health Insurance Fund, post-retirement medical fund and the affordable housing levy shall be deductible for tax purposes. This is a welcome move as it is more beneficial to taxable persons since they enjoy the full tax benefits of their contributions.

Proposed Effective Date: 01 July 2024

Repeal of the reliefs on contributions made to the National Health Insurance Fund, post-retirement medical fund and affordable housing scheme

The Bill proposes to repeal the relief which is available where an individual pays premiums for a medical insurance policy or towards the National Health Insurance Fund or towards a post-retirement medical fund. The relief is currently set at fifteen percent (15%) of the amount of premiums paid but subject to a limit of Kenya Shillings sixty thousand (KES 60,000).

The Bill proposes to repeal the affordable housing relief applicable to a person saving for the purchase of a house under an approved affordable housing scheme. The relief is currently set at fifteen percent (15%) of the employee's contribution but not exceeding KES 108,000 per annum.

It is noteworthy that this relief is different from the relief available for deductions pursuant to the Affordable Housing Levy Act.

Implications

This is a clean-up of the reliefs that were available on contributions as the Bill now proposes to fully allow the contributions for tax purposes.

Proposed Effective date: 1 July 2024

Introduction of advance pricing agreement

The Bill proposes to introduce a provision allowing a person with related party transactions to enter into an advance pricing agreement with the KRA valid for a period not exceeding five years. The advance pricing agreement will provide for arm's length prices. Where the KRA determines that the advance pricing agreement was entered into through a misrepresentation of facts, the KRA will issue a notice in writing to the person declaring the agreement null and void from the date the agreement was entered into.

Implications

If this proposal is passed into law, taxpayers would be able to engage with the KRA regarding their intercompany transactions and agree on the arm's length pricing of the transactions. Multinational groups may benefit from the advance pricing agreements as it creates certainty and mitigates the likelihood of being assessed based on their intercompany transactions.

There needs to be more clarity as to whether the KRA's power to declare the agreement null and void could be challenged at the Tax Appeals Tribunal, otherwise, the KRA could abuse its powers by arbitrarily declaring an advance pricing agreement null and void.

Proposed Effective Date: 01 January 2025

Automatic approval of change in the accounting date following lapse of six (6) months

The Bill proposes that an application for the change in the date to which a taxpayer makes up its accounts shall be deemed to be approved if no response is received from the KRA after the lapse six (6) months from the date of application for change.

Implications

The Income Tax Act as currently drafted only provides that the KRA must revert on an application for the change of accounting date within six (6) months. However, the Income Tax Act does not provide for what happens if no communication is received from the KRA. Accordingly, this is a welcome change as it will allow taxpayers to proceed with certainty should six (6) months lapse and no communication has been received from the KRA.

Proposed Effective Date 1 July 2024

Taxation of clubs and trade associations

The Bill proposes to delete the definition of the term "gross investment receipts" of a member club or trade association.

Currently, clubs and trade associations are taxed on their gross investment receipts which is defined to mean gross receipts in respect of interest, dividends, royalties, rents, or capital gains.

Implications

The deletion of the definition of gross investments receipts introduces uncertainty in the taxation of the income of clubs and trade associations. This is likely to lead to disputes with KRA.

Proposed Effective date: 1 July 2024

Repeal of the penalty on underpayment of instalment tax

The Bill proposes to repeal the provision that provides for the imposition of a penalty of twenty percent (20%) where a taxpayer has underpaid instalment tax. This is a positive move and intends to align with penalties as contained in the Tax Procedures Act.

Implications

The prescribed penalty of twenty percent (20%) is quite punitive and therefore its deletion will be welcome by taxpayers. Going forward, such unpaid tax will be subject to a penalty at the rate of five percent (5%) and interest at the rate of one percent (1%) per month.

Proposed effective date: 1 July 2024

Removal of investment deductions applying to investments relating to the Standard Gauge Railway

The Bill proposes to do away with the enhanced investment deduction of one hundred and fifty percent (150%) that applies on the construction of bulk storage in support of the Standard Gauge Railway operations.

The enhanced investment deduction applies where the capital expenditure is at least five billion shillings (KES 5,000,000) and the capacity of the bulk storage is at least one hundred thousand (100,000) metric tonnes. A taxpayer is allowed to claim the deduction in first year of use of the bulk facilities.

Implications

Any bulk facilities that are under construction and therefore not yet in use will not be entitled to the enhanced investment deduction. Such facilities could still benefit from investment deductions though at the reduced rate of ten percent (10%) per year. Accordingly, if this proposal is adopted, there will likely be a slow down in the rate of construction of such bulk facilities due to the significant change in the tax incentives, that is, from the ability to claim 150% investment deduction in one go to potentially only being allowed to claim 10% investment deduction per annum.

Proposed effective Date: 1 July 2024

Income tax now applicable to the income of amateur sporting associations

Currently, only the investment income of amateur sporting associations is subject to income tax. However, pursuant to the proposed amendments in the Bill, all income earned by amateur sporting associations will be subject to income tax. Such income would include any membership fees charged and any income earned from its activities.

Implications

This move may hamper the growth of amateur sporting associations which will now have to account for tax on their income which could be deemed to include membership fees.

Proposed effective date: 01 July 2024

Registered trust schemes now subject to tax

The Bill deletes the provision that currently exempts a registered trust scheme's income from tax. The Act defines a registered trust scheme as a trust scheme for the provision of retirement annuities which has been registered with the Commissioner.

Implications

If this proposal is adopted, the income of registered trust schemes would be subject to tax at the rate of thirty percent (30%). This would have a significant negative impact as it would greatly reduce the pension returns and discourage the growth of retirement schemes. This would also be in direct contravention of the Government's policy to promote the culture of saving for retirement.

Proposed Effective Date: 01 July 2024

Taxation of interest income earned from infrastructure bonds

The Bill proposes to subject to tax the interest income earned by resident persons from all listed bonds, notes and other similar securities used to raise funds for infrastructure and other social services (commonly referred to as **Infrastructure Bonds**). Accordingly, five percent (5%) withholding tax shall be applicable on the payment of such interest to resident persons.

However, the interest earned from Infrastructure Bonds listed prior to this proposal's coming into force shall continue to be exempt from tax. In addition, no withholding tax shall apply on such interest paid to non-resident persons.

Implications

Infrastructure Bonds and bonds in general have become quite popular with retail investors in the past with reports indicating that retail investors have overtaken traditional holders of government bonds such as insurers. Accordingly, this proposal can be seen as an attempt by the government to subject to interest income paid to resident retail investors and increase the tax base. It remains to be seen what the effect of the imposition of the reduced 5% withholding tax as opposed to the 15% withholding tax applicable on normal bonds will have on the uptake of Infrastructure Bonds by retail investors.

Proposed Effective Date: 01 July 2024

Expansion of tax-exempt pension income

The Bill proposes to exempt from income tax the payment of pension benefits to a person upon attainment of the retirement age determined by the rules of their respective registered retirement scheme. In addition, the exemption shall also apply where a person retires early prior to attaining the retirement age due to ill health or withdraws from the fund after twenty (20) years from the date of registration as a member of the fund.

Implications

This proposal will encourage saving for retirement through registered scheme and prevent early withdrawals due to the conditions for the exemption such as the requirement for withdrawal after twenty years from the date of registration as a member of the fund.

Proposed Effective Date: 01 July 2024

The income of a registered family trust now subject to income tax

The Bill proposes to subject to tax the income of a registered family trust. Currently, the income and principal sum of a registered family trust is exempt from income tax.

Implications

There has been significant uptake of registered family trusts as a preferred method of estate and succession planning. A key reason as to why registered family trusts have become quite popular is due to the tax exemptions such as making the income of a registered family trust exempt from income tax. Accordingly, the removal of the exemption will be a significant setback in making registered family trusts as preferred option of estate and succession planning in Kenya. This may also lead to a return of the popularity of offshore family trusts.

Proposed Effective: 01 July 2024

Gains on the transfer of immovable property to a family trust is now subject to income tax

The Bill proposes to subject to tax any gain arising from the transfer of immovable property to a family trust.

Implications

As mentioned above, the removal of tax exemptions relating to family trusts is likely to result in reduction in the uptake of family trusts as preferred methods of succession planning.

Proposed Effective Date: 01 July 2024

Deletion of the exemption for income earned from the Ajira Digital Program

The Bill proposes to delete the exemption that applies on income earned from the Ajira Digital Program. This exemption was to apply on income earned from the program for three (3) years beginning on 01 January 2020. Accordingly, this deletion is in recognition of the fact that the period has lapsed and is therefore a clean-up of the Act.

Proposed Effective Date: 01 July 2024

Taxation of amounts withdrawn from the National Housing Development Fund

The Bill proposes to subject to tax any amounts withdrawn by a contributor from the National Housing Development Fund for the purchase of their first house.

Implications

If adopted, this provision will be detrimental to contributors who saved monies with the National Housing Development Fund towards the purchase of their first house.

Proposed Effective Date: 01 July 2024

Taxation of interest income from Green Bonds

The Bill proposes to subject to tax the income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under the Green Bonds Standards and Guidelines (**Green Bonds**).

However, the interest earned from Green Bonds listed before 01 July 2024 shall continue to be exempt from tax.

Implications

This is an attempt by the Government to tax the interest income earned by investors from Green Bonds. This is likely to reduce the attractiveness of such bonds.

Proposed Effective Date: 01 July 2024

Non-resident contractors, sub-contractors, consultants, and employees subject to tax on income not directly related to aid projects

This proposal clarifies that the income earned by a non-resident contractor, sub-contractor, consultants, or employee from a project financed by a grant shall still be subject to tax.

Proposed Effective Date: 01 July 2024

Clarification on the taxation of gains arising from transfer of property within a special economic zone

The Bill proposes to clarify that the gain arising on the transfer of property within a special economic zone by a licensed special economic zone developer, enterprise or operator shall be exempt from income tax.

Proposed Effective Date: 01 July 2024

Investment Allowance Deductions on spectrum license

The Bill proposes to allow an investment deduction claim on capital expenditure incurred on the purchase of spectrum license by a telecommunication operator at the rate of ten (10) percent per year in equal instalments. For spectrum license purchased before 01 July 2024, the deduction shall be restricted to the unamortized portion over the remaining useful life of the spectrum license.

Implications

Purchase of spectrum licenses constitutes a significant capital expenditure for telecommunication operators. Accordingly, the availability of investment allowances on the purchase of spectrum licenses will be a welcome move by telecommunication operators.

Proposed Effective Date: 01 July 2024

Deletion of the lower income tax rate for a company that constructs one hundred residential units annual

The Bill proposes to do away with the lower income tax rate of fifteen percent (15%) that applies to a company that constructs one hundred residential units annually. Accordingly, the income earned by the companies will be subject to corporate tax at the rate of thirty percent (30%).

Implications

This move can be interpreted as a shift in the Government policy following the failure of this exemption to generate the desired outcome.

Proposed Effective Date: 01 July 2024

Income of ship owners

The Bill proposes to subject to tax the gross income a ship owner arising from carriage of passengers and cargo that embark in Kenya at the rate of three percent (3%) of the gross amount received if there is no reciprocal arrangement with Kenya and the country of residence of the non-resident ship owner. Previously, such income has been subject to tax at the rate of two and a half percent (2.5%).

Proposed Effective Date: 01 July 2024

Requirement to deduct withholding tax regardless of the amount

The Bill proposes to subject to withholding tax all payments made to a resident person in respect to management or professional fees or with respect to a contractual fee without any regard to the gross amount payable. Currently, the requirement to deduct withholding tax only applies where the aggregate value of management, professional or contractual fee paid amounts to Kenya Shillings twenty four thousand (KES 24,000) or more in a month.

Implications

The implication of this proposal is that all payments for management, professional or contractual fees shall be subject to withholding tax. This shall increase the compliance burden for taxpayers, and especially those who make numerous small payments below the current threshold.

Proposed Effective Date: 01 January 2024

Changes in the Capital Gains Tax Regime

The Bill proposes to amend the Eighth Schedule to the Income Tax Act as follows:

Definition of a company

The Bill clarifies that a “company” includes a body of persons which carries on the activities of a members’ club or trade association that is deemed to be carrying on business under the Act.

Definition of related persons

The Bill proposes to amend the Eighth Schedule by deleting the definition of “related persons.” This deletion seeks to avoid the duplication of definitions considering that section 2 of the Act already contains a definition for the phrase “related persons.”

Clarification on what constitutes a family company



Though not entirely clear, the Bill proposes that a family company shall be deemed to exist where an individual spouse holds one hundred percent (100%) of the shareholding.

Clean up on the regulation of returns EPZ

The Bill cleans up the penalty that is applicable on the failure of an EPZ entity to file a return on time.

Currently, the Act provides that the failure of an EPZ entity to file a return on time attracts a penalty of Kenya Shillings two thousand (KES 2,000) per day for the period that the return is not filed. The deletion of this penalty provision will mean that going forward, the penalty applicable to an EPZ entity for the failure to file a return shall be as prescribed in the Tax Procedures Act. Pursuant to the Tax Procedures Act, the penalty for the failure of a company to file a return is the higher of five percent (5%) of the amount of tax payable under the return or Kenya Shillings twenty thousand (KES 20,000).

Proposed effective date: 1 July 2024

VALUE ADDED TAX (VAT)

Definition of tax invoice to include an electronic tax invoice

The Bill proposes to introduce a definition of tax invoice to include an electronic tax invoice issued in accordance with section 23A of the Tax Procedures Act. The requirement for businesses to issue an electronic tax invoice was introduced via the Finance Act, 2023 and was effective on 1 September 2023.

Implications

The amendment would align the VAT Act provisions with the Income Tax Act and the Tax Procedures Act on requirement to issue electronic tax invoices for transactions.

Proposed effective date: 1 July 2024

Time of supply for exported goods

The Bill proposes to introduce a new test to determine the time of supply for exported goods as being the time when the registered person is in possession of the required export confirmation documents.

Implications

The time of supply for exported goods currently is the earlier of: (a) the date on which the goods are delivered; (b) the date on which an invoice for the supply is issued; or (c) the date on which payment for the supply is received, in whole or in part. There are various documents that are declared in relation to exportation of goods and it is unclear what export confirmation documents (which would vary depending on the type of goods exported) means. It could be argued that export confirmation document means an export certificate which is issued upon exit of the goods through the border/port.

Proposed effective date: 1 July 2024

Changes in relation to claim of VAT refunds

The Bill proposes the following changes to the VAT refunds regime:

- excess input tax arising from withholding VAT to be paid to taxpayers similar to that arising from zero rating as opposed to refund/set off per section 47(4) of the Tax Procedures Act;
- deletion of the requirement to lodge claims for refund of the excess tax within 24 months from the date the tax becomes due and payable;
- deletion of the provision on claim of refund of excess input tax by manufacturers due to supplies made to an official aid funded project approved by the Cabinet Secretary responsible for matters finance; and
- deletion of the provisions on entitlement to full input VAT credit where the input tax attributable to taxable supplies is more than ninety percent (90%) and the disallowing of the full input VAT credit where the input tax attributable to taxable supplies is less than ten percent (10%).

Implications

The proposals would (a) align the claim of refund from excess withholding VAT to that from zero rating under the VAT Act as opposed set off or claim of refund under the Tax Procedures Act (b) exclude manufacturers under official aid funded project approved by the Cabinet Secretary responsible for matters finance from the VAT refund regime. This would be disadvantageous as supplies to such project are exempt from VAT and the manufacturers would ordinarily not be eligible to claim input VAT on the same (c) the requirement to lodge VAT refunds applications within 24 months from the date the tax becomes due and payable would no longer be applicable and taxpayers would be able to lodge the application any time and (d) the provisions on full input VAT credit that had been automatically available for taxpayers where in case of mixed supplies, the value of the taxable supplies was more than ninety percent (90%) would no longer be applicable. Conversely the provision of disallowance of the whole input VAT where in case of mixed supplies, the value of taxable supplies is less than ten percent (10%) would no longer apply. Taxpayers making mixed supplies would be allowed to claim the input tax attributable to taxable supplies regardless of the ratio of their supplies.

Proposed effective date: 1 July 2024

Deletion of sixty-day (60) timeline for return of tax to the KRA for tax on bad debt

The Bill proposes to delete the following amendments introduced vide the Finance Act, 2023:

- if a supplier was refunded by the KRA for tax paid on a bad debt but the supplier subsequently recovered the tax refunded from the buyer, the supplier would be required to return the tax to the KRA within sixty (60) days from the date of recovery; and
- an interest rate of two percent (2%) per month would be applicable on the tax refunded.

Implications

The deletion of the sixty-day timeline and the interest rate provision would ensure clarity since the VAT Act already provided for a thirty-day (30) timeline for the taxpayer to return the tax refunded to the KRA upon recovery of bad debts and the same interest rate was also already provided in case of failure to comply with the said timelines.

Proposed effective date: 1 July 2024

Increase of VAT registration threshold

The Bill proposes to increase the threshold for mandatory VAT registration from Kenya Shillings five million (KES 5,000,000) to Kenya Shillings eight million (KES 8,000,000).

Implications

The threshold of Kenya Shillings five million (KES 5,000,000) has been in place for many years despite increased inflation. Kenya's monthly inflation rate has varied between 6% to 9%. The increased threshold would be a welcome move to reduce the number of businesses required to register. However, the Kenya Shillings eight million (KES 8,000,000) threshold may still be quite low and result in numerous businesses falling within the mandatory registration threshold.

Proposed effective date: 1 July 2024

Deletion of VAT exemptions for specific financial services

The Bill proposes to delete VAT exemptions for the following financial services, which would then be chargeable to VAT at the standard rate, currently sixteen percent (16%):

- issuing of credit and debit cards;
- telegraphic money transfer services;
- foreign exchange transactions, including the supply of foreign drafts and international money orders;
- cheque handling, processing, clearing and settlement including special clearance or cancellation of cheques;
- issuance of securities for money, including bills of exchange, promissory notes, money and postal orders;
- the assignment of a debt for consideration; and
- the provision of financial services on behalf of another on a commission basis.

Implications

The proposal would result in an increase in the cost of the above-mentioned financial services which cost would ordinarily be passed on to consumers. Further, the removal of some of the exemptions such as assignment of debt for consideration and issuance of securities for money whereas the granting of the credit is exempt from VAT is irrational. In addition, the proposed changes will complicate the administration of VAT with regards to financial institutions for the following reasons, (a) financial institutions that provide both exempt and taxable services will be required to compute and maintain records for deductible input VAT attributable to the taxable supplies and (b) for margin transactions where the consideration is an implicit margin or spread between the buying and selling prices such as foreign exchange transactions, determination of the taxable value may be straight forward.

Proposed effective date: 1 July 2024

VAT exemption for transfer of business as a going concern

The Bill proposes to make the transfer of business as a going concern exempt from VAT. Currently, VAT is applicable on such transfers at the standard rate of sixteen percent (16%).

Implications

The application of VAT on transfer of business as a going concern at the standard rate of sixteen percent (16%) increased the cost of such transfers as the buyer would incur the VAT costs and in addition, where the buyer makes exempt supply, not be eligible to claim the input VAT. Since transfer of shares is exempt from VAT, to save on the additional VAT cost, transaction parties have in most instances opted for transfer of shares when acquiring a business. While the exemption is welcome as it will eliminate the additional VAT cost to the buyer, the vendor would not be able to deduct the input tax incurred in relation to the transfer. The ideal treatment would have been to zero rate such transfers to allow the seller to claim the input tax incurred in relation to the transfer.

Proposed effective date: 1 July 2024

VAT exemption on insurance or reinsurance services to be limited to insurance and reinsurance premiums

The Bill proposes to limit the VAT exemption on insurance and reinsurances services to insurance and reinsurance premiums. As such, the rest of insurance and reinsurance services would be subject to VAT at the standard rate, currently, sixteen percent (16%).

Implications

The High Court had in a petition filed by the Association of Kenya Insurers held that the imposition of VAT on insurance agency services and insurance brokerage services was unconstitutional on the basis that VAT is a consumption tax that should be borne by the final consumer of the supply.

In this case, the exemption of the insurance or reinsurance premium would prevent the VAT costs incurred by the companies to be passed to the final consumer through the insurance premium and may therefore be unconstitutional as the VAT cost may be borne by the company. We note that there may be additional fees imposed for insurance or reinsurance services raising the cost for the consumer.

Proposed effective date: 1 July 2024

Standard rate of VAT to be applicable on aeroplanes and aircraft

The Bill proposes to delete the VAT exemption provided for:

- 8802.30.00-Aeroplanes and other Aircraft of unladen weight exceeding 15,000 kgs;
- 8802.60.00- Spacecraft (including satellites) and suborbital and spacecraft launch vehicles;
- Hiring, leasing and chartering of aircrafts excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00; and
- Direction-finding compasses, instruments and appliances for aircraft.

Implications

The VAT exemption for the sector was to encourage acquisition of modern aircraft and airplanes primarily due to safety concerns associated with acquiring older aircraft or aeroplanes. The introduction of VAT at the standard rate may result in increased safety concerns where obsolete aircraft or aeroplanes are acquired due to the cost of new aircraft being prohibitively high. We note that the VAT exemption for aircraft spare parts has been maintained.

Proposed effective date: 1 July 2024

Removal of tourism sector VAT exemptions

The Bill proposes to remove the following VAT exemptions that had been introduced to boost the tourism sector:

- Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.;
- Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion;
- Taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon the recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.

Implications

The exemptions had been introduced to incentivize the growth of the tourism sector. The sector has continued to grow every year with more tourists arriving in Kenya and the removal of the exemptions may discourage further investments in the tourism sector.

Proposed effective date: 1 July 2024

Clarification of VAT exemption on locally manufactured passenger motor vehicles

The Bill proposes to introduce a definition of “original equipment manufacturer” to mean “a manufacturer of parts and subassemblies who owns the intellectual property rights in the parts or subassemblies.”

Implications

The exemption would encourage the use of at least thirty percent (30%) of equipment from local manufacturers that own the intellectual property in the parts or subassemblies used for the local manufacture of passenger motor vehicles.

Proposed effective date: 1 July 2024

Removal of VAT exemptions for the manufacturing and construction sectors

The Bill proposes to delete the following VAT exemptions:

- Such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector provided that the value of such investment is not less than two billion shillings;
- Plant, machinery and equipment used in the construction of a plastics recycling plant;
- 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;

- Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon recommendation by the Cabinet Secretary responsible for health

Implications

The above exemptions had been introduced to encourage investment in construction manufacturing and, plastics recycling. The removal of the exemptions may therefore discourage further investments in manufacturing, plastics recycling, and construction of specialized hospitals.

Proposed effective date: 1 July 2024

Standard rating of betting, gaming, and lotteries services

The Bill proposes to delete the VAT exemption for betting, gaming and lotteries services. These services would be subject to VAT at the standard rate, currently sixteen percent (16%).

Implications

It is unclear whether the price for VAT purposes for betting or lottery services would be the amount wagered or staked since, for example, most betting companies do not charge for their services.

It is estimated that in 2022, the sector's turnover was Kenya Shillings fifty billion with approximately one hundred and seventy (170) registered firms in the betting and gaming sector.

Proposed effective date: 1 July 2024

Standard rating of locally assembled and manufactured mobile phones

The Bill proposes to standard rate the supply of locally assembled or manufactured mobile phones.

Implications

In 2023, Kenya unveiled its first phone assembly plant. Since there has yet to be additional suppliers entering the market, the zero-rated status should be maintained to encourage investment.

Proposed effective date: 1 July 2024

Removal of VAT exemption granted to persons that had an agreement with the Government

The Bill proposes to delete the VAT exemption for taxable goods supplied to persons that had an agreement or contract with the Government prior to 25th April 2020 and the agreement or contract provided for exemption from value added tax.

Implications

The removal of the VAT exemption would result in the government renegeing on its contractual obligations.

Proposed effective date: 1 July 2024

Removal of zero-rated status for e-mobility sector goods

The Bill proposes that the following items which had been zero-rated for VAT purposes would be subject to VAT at the standard rate, currently, sixteen percent (16%):

- The supply of electric bicycles.
- The supply of solar and lithium-ion batteries.
- The supply of electric buses of tariff heading 87.02.

Implications

The incentives for the e-mobility sector had been introduced in 2023 to incentivize green energy use in the transport sector. There has been increased uptake of electric buses and electric bicycles in Kenya with numerous start-ups setting up in Kenya. The standard rating of the supplies of electric buses and vehicles could increase the cost of these e-mobility products and slow down the growth in the sector.

Proposed effective date: 1 July 2024

Changes in VAT rate for specific goods and services

In addition, effective 1 July 2024, the Bill proposes a number of changes to the VAT status of various items as summarized below:

Item	Old VAT treatment	Proposed VAT treatment
Pressure sensitive adhesive of tariff number 3506.91.00	Exempt	Standard rated
Plain polythene film/LPDE of tariff number 3921.19.10	Exempt	Standard rated
Plain polythene film/PE of tariff number 3921.19.10	Exempt	Standard rated
PE white 25-40gsm/release paper of tariff number 4811.49.00	Exempt	Standard rated
ADL 25-40gsm of tariff number 5603.11.00	Exempt	Standard rated
The supply of denatured ethanol of tariff number 2207.20.00.	Exempt	Standard rated
Gluten and unleavened bread	Exempt	Standard rated
Services imported or produced locally for use by the local film producers or local film agents upon recommendation by the Kenya Film Commission, subject to approval by the Cabinet Secretary for the National Treasury	Exempt	Standard rated
Mosquito repellent	Standard rated	Exempt

Tea packaging material	Standard rated	Exempt
Micronutrients foliar feeds and bio-stimulants of Chapter 38	Standard rated	Exempt
The supply of motorcycles of tariff heading 8711.60.00	Zero rated	Exempt
The supply of ordinary bread	Zero rated	Exempt
Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of tariff number; <ul style="list-style-type: none"> i. 0401.10.00 of a fat content, by weight, not exceeding 1%; ii. 0401.20.00 of a fat content, by weight, exceeding 1% but not exceeding 6%; iii. 0401.40.00 of a fat content, by weight, exceeding 6% but not exceeding 10%; iv. 0401.50.00 of a fat content, by weight, exceeding 10% 	Zero rated	Exempt
All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.	Zero rated	Exempt
Agricultural pest control	Zero rated	Exempt
The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent weight	Zero rated	Exempt
Inbound international sea freight offered by a registered person	Zero rated	Exempt

EXCISE DUTY

Introduction of excise duty on internet and social media advertisement of specific products and services

The Bill proposes to introduce excise duty at fifteen percent (15%) on fees charged for internet and social media advertisements relating to alcoholic beverages, betting, gaming, lotteries, and prize competition.

Implications

There has been increased use of the internet and social media to advertise alcoholic beverages, betting, gaming, lotteries, and prize competition. The fee charged by internet and social media platforms to advertise the above-mentioned products and services is likely to increase.

Proposed effective date: 1 July 2024

Introduction of excise duty on excisable services offered by a non-resident through a digital platform

The Bill proposes to introduce excise duty on excisable services offered in Kenya by a non-resident through a digital platform that would be payable by the non-resident person offering the service. The current list of excisable services in the Excise Duty Act and the current and proposed rates are set out below:

Description	Current Excise Duty Rate	Proposed rate
Telephone and internet data services	15% of their excisable value	20%
Fees charged for money transfer services by banks, money transfer agencies, and other financial service providers	15% of their excisable value	20%
Betting	12.5% of the amount wagered or staked	20%
Gaming	12.5% of the amount wagered or staked	20%
Prize Competition	12.5% of the amount wagered or staked	20%
Lottery	12.5% of the amount wagered or staked	20%
Fees charged by digital lenders	20%	No new rate proposed.

Fees charged on advertisement on television, print media, billboards, and radio stations on alcoholic beverages, betting, gaming, lotteries, and prize competition	15%	Introducing excise duty on advertisement on the internet or social media on alcoholic beverages, betting, gaming, lotteries, and prize competition
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Implications

We note that this provision would bring into the tax base, non-residents offering the above-mentioned services in Kenya through a digital platform which would ensure equality with the residents offering the services that are required to pay the same amount of excise duty. There is a risk that the non-residents offering the above services through a digital platform may block persons in Kenya from accessing their platforms.

Proposed effective date: 1 July 2024

Increase in excise duty rate on money transfer services

The Bill proposes to increase excise duty from fifteen percent (15%) to twenty percent (20%) on fees charged for money transfer services offered by:

- banks, money transfer agencies, other financial service providers; and
- cellular phone service providers or payment service providers licensed under the National Payment Systems Act, 2011.

Proposed effective date: 1 July 2024

Implications

The increase in the excise duty rate is likely to result in increased costs for money transfer services.

Proposed effective date: 1 July 2024

Extension of timeline for payment of excise duty by manufacturers of alcoholic beverages

The Bill proposes to extend the timeline for payment of excise duty by license manufacturers of alcoholic beverages to five (5) working days upon removal of goods from the stockroom. The Finance Bill, 2023 had required manufacturers of alcoholic beverages to pay excise duty within twenty-four (24) hours.

Implications

The additional time would ease the compliance burden that had been imposed on manufacturers of alcoholic beverages.

Proposed effective date: 1 July 2024

Deletion of inflation adjustment for excisable goods

The Bill proposes to delete the automatic adjustment for inflation of excise duty rates on excisable goods.

Implications

The automatic inflation adjustment of excise duty rates had been subject to court challenges every year and invariably, the Courts would issue orders suspending the inflation adjustment. The KRA's powers to implement the inflation adjustment were removed by the Finance Act, 2023. This amendment would clean up the remaining provisions on the inflation adjustment. Nevertheless, the Cabinet Secretary responsible for matters relating to finance still has the power to increase or decrease the excise duty rate (subject to a ten percent (10%) limit).

Proposed effective date: 1 July 2024

Cabinet Secretary responsible for National Treasury may exempt spirit made from agricultural products in Kenya from excise duty

The Bill proposes to empower the Cabinet Secretary responsible for matters relating to finance to grant remission of excise duty for spirit made from agricultural products grown in Kenya.

Proposed effective date: 1 July 2024

Harmonization of the tariff codes in the Excise Duty Act with the East African Community Customs Union Protocol

The Bill proposes to introduce a provision referencing the tariff codes used in Annex 1 of the Protocol on the Establishment of the East African Customs Union for purposes of classifying goods in the Excise Duty Act.

Proposed effective date: 1 July 2024

KRA required to consider an application for a license within 14 days of application

The Bill proposes to introduce a fourteen (14) day timeline for the KRA to respond to an application for a license under the Excise Duty Act.

Implications

There was previously no timeline in law. This will ensure administrative efficiency in the processing of licence applications.

Proposed effective date: 1 July 2024

Removal and introduction of excise duty on specified products

The Bill proposes to exclude the following products from excise duty where the products originate from East Africa Community Partner States that meet the East African Community Rules of Origin:

- Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90;
- Imported eggs of tariff 04.07;
- Imported onions of tariff heading 04.07; and
- Imported potatoes, potato crisps and potato chips of tariff heading 07.01 and imported potatoes of tariff numbers 0710.10.00, 2004.10.00 and 2005.20.00.

The Bill also proposes to:

- exclude imported cement clinkers from excise duty;
- introduce excise duty on all articles of plastic of tariff heading 3923.30.00 and 3923.90.90. Previously, only imported articles of plastic were subject to excise duty;
- Introduce excise duty on coal at 5% of the value or shs. 27,000 per metric ton, whichever is higher; and
- exempt all goods including materials, supplies, equipment, machinery, and motor vehicles for the official use by the National Intelligence Service from excise duty. This would mirror the VAT exemption also provided.

Proposed effective date: 1 July 2024

Clarification of excise duty exemption on locally manufactured passenger motor vehicles

The Bill proposes to introduce a definition of “original equipment manufacturer” to mean “a manufacturer of parts and subassemblies who owns the intellectual property rights in the parts or subassemblies.”

Implications

The exemption would be restricted to manufacturers of passenger motor vehicles in Kenya where at least thirty percent (30%) of the motor vehicle comprises parts and subassemblies from an original equipment manufacturer in Kenya.

Proposed effective date: 1 July 2024

Proposed changes to excise duty rates

In addition, the Bill proposes a number of changes to as summarized below:

Product description	Old rate	New rate
Motorcycles of tariff 87.11.60.00 other than motorcycle ambulances and locally assembled motorcycles Proposed effective date: 1 July 2024 <i>Implication: The amendment would narrow the scope of motorcycles subject to excise duty.</i>	KES 11,608.23 per unit	10% of the value or KES 12,952.83 per unit, whichever is higher.
Imported sugar confectionary of tariff heading 17.04 Proposed effective date: 1 July 2024	Shs. 242.29 per kg.	Shs. 257.55 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits Proposed effective date: 1 September 2024	Shs. 229 per litre.	Shs. 25 per centilitre of pure alcohol.
Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%. Proposed effective date: 1 September 2024	Shs. 134 per litre.	Shs. 25 per centilitre of pure alcohol.

<p>Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%.</p> <p>Proposed effective date: 1 September 2024</p>	<p>Shs. 335.30 per litre.</p>	<p>Shs. 14 per centilitre of pure alcohol.</p>
<p>Cigarette with filters (hinge lid and soft cap)</p> <p>Proposed effective date: 1 July 2024</p>	<p>Shs. 3,825.99 per mille.</p>	<p>Shs. 4,100 per mille</p>
<p>Cigarettes without filters (plain cigarettes)</p> <p>Proposed effective date: 1 July 2024</p>	<p>Shs. 2,752.97 per mille.</p>	<p>Shs. 4,100 per mille.</p>

TAX PROCEDURES ACT

Regulations on the Tax Agents Committee

The Bill proposes to amend the Tax Procedures Act to clarify that the Tax Agents Committee which is tasked with considering applications for the licensing of tax agents and recommending the cancellation of such licenses will be established under regulations prescribed under the Tax Procedures Act.

Implications

This proposal is timely since it contemplates a framework for the establishment of a tax agents committee as well as a framework for the regulation of tax agents. There have been cases where taxpayers have been defrauded by persons purporting to be tax agents and therefore, the tax agents rules are important in ensuring that tax services are provided by persons who are well versed with tax provisions.

In addition, any fraud or malpractice cases by persons alleging to be tax practitioners will be dealt with in a proper manner by the Tax Agents Committee. However, before the regulations are issued, certain professional bodies such as the Law Society of Kenya, the Institute of Certified Public Accountants of Kenya and others would need to be consulted to provide their input as some persons who are tax agents are already subject to regulation under other Acts of Parliament.

The proposed effective date is 1 July 2024.

Electronic Tax Invoicing Requirements

The Bill proposes to amend the Tax Procedures Act to clarify the information to be contained in an electronic tax invoice. The information contained will be as follows:

- a) the name, address and PIN of the supplier and the purchaser (if any);
- b) the serial number of the tax invoice;
- c) the date and time which the tax invoice was issued and the date and time which the supply was made if different from the date of issue of the tax invoice;
- d) description of the supply including quantity of the goods or the type of services;
- e) consideration for the supply and details of any discounts allowed at the time of the supply; and

- f) the tax rate charged, and the total tax amount of tax charged and any other prescribed information.

Implications

If this proposal is adopted, taxpayers should ensure that tax invoice registers they procure are able to capture the above details in the invoices generated.

Interestingly, this proposal comes after the Tax Procedures (Electronic Tax Invoice) Regulations, 2024 (the **ETI Regulations**) gazetted on 28 March 2024 and which already prescribe in detail, the format and content which an electronic tax invoice should adopt and some of the information provided in the proposed amendments is already provided in the ETI Regulations.

The proposed effective date is 1 July 2024.

One year validity of recovery notices issued to persons owing money to taxpayers

The Bill proposes a one-year validity on notices such as agency notices issued by the KRA, on account of unpaid taxes to a person who owes, holds or may subsequently owe or hold money to a taxpayer.

Further the Bill proposes to repeal the provision currently permitting the KRA to issue such agency notice where the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court.

Implications

The proposal (if adopted) will ensure that agency notices continue to be in place for a period of one year. This means that if the person who has received an agency notice from KRA since he/she owes money to the taxpayer, he/she will only be discharged from his/her duties under the agency notice after a period of one year. This means that during the one year period, any money owing to the taxpayer by the agent should be paid to KRA. This is unless the agency notice is cancelled by KRA.

Further, repealing the provisions currently permitting the KRA to issue an agency notice where a taxpayer has not appealed against an assessment is a clean-up exercise since the provision is already covered under section 14(b) of the Tax Procedures Act which provides that an agency notice shall not be issued unless a taxpayer has not objected to or challenged the validity of the tax assessment.

The proposed effective date is 1 July 2024.

Elimination of the Value Added Tax Withholding Exemptions

The Bill proposes to remove the exemptions granted on the taxable value of zero-rated supplies and registered manufacturers who invested at least three billion shillings (KES 3,000,000,000) in the three years preceding 01 July 2022.

The Bill also maintains the imposition of a penalty of ten percent (10%) of the amount due where a withholding tax agent fails to deduct and remit the tax due. However, the penalty will be imposed if the tax deducted is not remitted by the fifth (5th) working day after the deduction was made.

Implications

The deletion of the exemption continues the trend in the Bill to delete exemptions that are deemed unnecessary.

The proposed effective date is 1 July 2024.

Refund of overpaid taxes

The Bill proposes to amend section 47 (1)(a) to allow a taxpayer to apply to the KRA to offset overpaid tax against outstanding tax debts and future tax liabilities or a refund of the overpaid tax (a) in the case of Income tax, within five years from the date on which tax was paid and (b) in the case of any other tax, within six months from the date on which the tax was overpaid.

Implications

This proposal serves as a clean-up by clarifying that overpaid income tax will be refunded within five years from the date of overpayment for Income tax while the other taxes including VAT, excise duty among others would be refunded within six months from the date of overpayment subject to application to the KRA.

Currently, only overpaid VAT is refundable within six months of overpayment while the rest of the taxes including income tax, excise duty and any other taxes are refundable within five years from the date of overpayment.

The proposed effective date is 1 July 2024.

Expanded time frame for the issue of Objection Decisions

The Bill proposes to amend section 51 to provide that:

- (1) where a taxpayer fails to provide additional information required by the KRA following the lodging of the notice of objection, or fails to provide the information within the specified period, the objection shall be deemed disallowed; and
- (2) the KRA shall make the objection decision within ninety (90) days from the date of receipt of a valid notice of objection.

Implications

This proposal, if adopted, will exert undue pressure on taxpayers, who must provide KRA with specified additional information pursuant to lodging a notice of objection. This is quite unfair since KRA may request for documentation not maintained by a taxpayer, since the taxpayer does not maintain such documents as part of its business. The failure to provide such documents would mean that the taxpayer will not have an opportunity to present its case at the Tax Appeals Tribunal and will be condemned unheard.

Further, this proposal now allows KRA more time to consider objections filed by taxpayers in issuing the objection decision which would be a significant hindrance to the expeditious resolution of tax disputes. It should be recognized that tax disputes involve money and it is prudent for businesses to have certainty on tax matters as soon as possible to be able to plan their tax affairs hence the provision will greatly disadvantage taxpayers.

In addition, if the provision is read with the proposed amendment to section 77 of the Tax Procedures Act, which proposes to exclude weekends and public holidays from the calculation of time for tax matters. This means that in the true sense, an objection decision could be delivered in one hundred and twenty (120) days which is almost four (4) months.

The proposed effective date is 1 July 2024.

Integration of the application of electronic tax system with the data management and reporting system

The Bill proposes to authorize the KRA to issue a notice requiring the integration of the electronic data management and reporting system with the application of electronic tax system to enable submission of electronic documents and transactional data. Failure to comply with the notice issued by the KRA is an offence which upon conviction of a person, may lead to a penalty not exceeding two million Kenya shillings (KES 2,000,000) per months or part of the month that the failure continues.

In addition, the Bill proposes a penalty not exceeding two million Kenya shillings (KES 2,000,000) per months or part of the month that the failure continues for persons convicted of failing to submit electronic documents through the data management and reporting system for financial institutions.

Implications

This proposal comes at a time when KRA has been trialing the integration of its systems with systems of various taxpayers in certain industries in order to access the records and information in real time. It would appear that the trials were a success leading to the proposed introduction of this provision *en masse*.

Proposed effective date 01 July 2024

Exclusion of weekends and public holidays from computation of the period for taking action under tax laws

The Bill proposes the exclusion of Saturdays, Sundays and public holidays from the period for submitting tax returns, notices and other tax documents, payment of tax and for taking any other action under tax laws.

Implications

This provision is not well considered since it would mean that time under tax laws would be calculated using business days rather than calendar days. By way of example a return that is due to be filed on a weekend or a public holiday would be postponed to the next working day. This could trigger penalties for the taxpayers on the iTax system, if the iTax System is not configured to take this into account.

We have also indicated above that this provision would be disadvantageous to taxpayers in terms of receiving objection decisions from the KRA.

Proposed effective date 01 July 2024

Penalty on late submission and failure to submit returns by an export processing zone enterprises

The Bill proposes a penalty of twenty thousand Kenya shillings (KES 20,000) per month (and part of the month that the failure continues) on export processing zone (EPZ) enterprises that fail to submit returns as required under the Income Tax Act. Currently, the penalty is two thousand Kenya shillings (KES 2,000) per day or for as long as the failure continues.

Implications

This proposal is meant to align the penalties for EPZ enterprises with the other penalties stipulated under the Tax Provisions.

Proposed effective date 01 July 2024

Requirement of a KRA PIN for Registration of Employees Working Remotely outside Kenya for Kenyan Employers

The Bill proposes to include the registration of an employee working remotely outside Kenya for an employer in Kenya among the transactions for which a KRA PIN is required.

Implications

It is not clear what this provision hopes to achieve, since already employment income earned by non-residents should be subject to Pay as You Earn (PAYE) in Kenya.

Proposed effective date 01 July 2024

MISCELLANEOUS FEES AND LEVIES

Exemption of goods imported under a Special Operating Framework Agreement from Export Promotion Levy

The Bill proposes to exempt goods imported under a Special Operating Framework Agreement (**SOFA**) with the Government from the export promotion levy.

Implications

This proposal will give relief to importers of goods under a SOFA hence reducing the cost of importation of goods into the country. Currently also, the export promotion levy does not apply to goods originating from East African Community Partner States that meet the East African Community Rules of Origin.

Proposed effective date 01 July 2024

Goods exempt from Import Declaration Fee and Railway Development Levy

The Bill proposes to exempt: (a) all material supplies, equipment, machinery and motor vehicles for the official use by the National Intelligence Service (**NIS**) and (b) input, raw materials and machinery used in the manufacture of mosquito repellants upon recommendation by the Cabinet Secretary responsible for matters relating to Health from both the Import Declaration Fee (**IDF**) and Railway Development Levy (**RDL**).

Implications

This proposal will give relief to the NIS and the manufacturers of mosquito repellants by reducing the cost incurred during the importation of the items necessary for their business and/or operation.

Proposed effective date 01 July 2024

Goods Subject to the Export and Investment Promotion Levy and the Applicable Rates

The Bill proposes to introduce the export and investment promotion levy (**EPL**) on specific items at the rate of two per cent (2%) of the customs value of the items, for example, denatured ethyl alcohol and other spirits, rum and other spirits obtained by distilling fermented sugar, vodka, cement clicker, kraft liner just to mention

a few. This is a reduction of the rates of EPL which is currently chargeable at the rate of between 10% to 17.5% on various items to 2% of the customs value as shown in the table below.

Implications

This proposal will lower the cost of importation of goods into the country for home use by lowering the rate of the EPL.

Tariff Description	Current Export and investment Promotion Levy rate	Proposed Export and investment Promotion Levy rate
Cement clinker (Tariff Number - 2523.10.00)	17.5% of the customs value	2% of the customs value
Semi furnished 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 (Tariff Number - 7207.11.00)	17.5% of the customs value	None
Bars and rods of iron or non-alloy steel, value hot-rolled, in irregularly wound coils of circular cross section measuring less than 14mm in diameter of cross section measuring less than 8mm (Tariff Number - 7213.91.10)	17.5% of the customs value	None
Bars and rods of iron or non-alloy steel, value hot-rolled, in irregularly wound coils of circular cross0section measuring less than 14mm in diameter; other (Tariff Number - 7213.91.90)	17.5% of the customs value	None
Uncoated kraft paper 10 and paper board in rolls or sheets; Kraft liner; unbleached (Tariff Number - 4804.11.00)	10% of the customs value	2% of the customs value

Sack kraft paper; unbleached (Tariff Number - 4804.21.00)	10% of the customs value	None
Other kraft paper and paper board weighing 150g/m ² or less: Unbleached (Tariff Number - 4804.31.00)	10% of the customs value	None
Sacks and bags having a base of a width of 40cm or more (Tariff Number - 4819.30.00)	10% of the customs value	None
Other sacks and bags, including cones (Tariff Number - 4819.40.00)	10% of the customs value	None
Denatured ethyl alcohol and other spirits	None	2% of the customs value
Rum and other spirits obtained by distilling fermented sugar	None	2% of the customs value
Vodka	None	2% of the customs value
Organic surface – active products and preparations for washing the skin (3401.30.00).	None	2% of the customs value
Uncoated kraft paper and paper board in rolls or sheets other than that of heading 48.02 or 48.03-Other	None	2% of the customs value
Milk and cream of a fat content by weight, exceeding 1% but not exceeding 6% (0401.20.00)	None	2% of the customs value
Ceramic sinks, wash basins, pedestals, baths, bidet, water closet pans, flushing cistern, urinals and similar sanitary fixtures (69.10).	None	2% of the customs value
Billets (7207.11.00)	None	2% of the customs value
Cooking stoves for liquid fuel (7321.12.00)	None	2% of the customs value

Motorcycles with internal combustion engine not exceeding 50 cc (8711.10.90)	None	2% of the customs value
Motorcycles with internal combustion engine exceeding 50 cc but not exceeding 250 cc (8711.20.10)	None	2 % of the customs value
Motorcycles with internal combustion engine exceeding 50 cc but not exceeding 250 cc (8711.20.90)	None	2 % of the customs value
Motorcycles with internal combustion engine exceeding 250 cc but not exceeding 500cc (8711.30.90)	None	2 % of the customs value
Motorcycles with internal combustion engine exceeding 500 cc but not exceeding 800 cc (8711.40.90)	None	2 % of the customs value
Motorcycles with internal combustion engine exceeding 800 cc (8711.50.90)	None	2 % of the customs value
Electric Motorcycles (8711.60.00)	None	2 % of the customs value
Metal furniture of a kind used in offices (9403.10.00)	None	2% of the customs value
Other metal furniture (9403.20.00)	None	2 % of the customs value
Wooden furniture for office (9403.30.00)	None	2 % of the customs value
Wooden furniture for kitchen (9403.40.00)	None	2 % of the customs value
Wooden furniture for bedrooms (9403.50.00)	None	2 % of the customs value
Other wooden furniture (9403.60.00)	None	2 % of the customs value
Furniture of plastics (9403.70.00)	None	2 % of the customs value

Furniture of bamboo (9403.82.00)	None	2 % of the customs value
Furniture of rattan (9403.83.00)	None	2 % of the customs value
Furniture of cane, osier or similar material (9403.89.00)	None	2 % of the customs value
Parts of furniture, not of wood (9403.91.00)	None	2% of the customs value
Parts of furniture, not of wood (9403.99.00)	None	2% of the customs value
Mattress Supports (9404.10.00)	None	2% of the customs value

Proposed effective date 01 July 2024

DATA PROTECTION ACT

Exemption from the Data Protection Act

The Bill proposes to amend the Data Protection Act to exempt processing of personal data from the requirements under the Data Protection Act if the disclosure is necessary for the assessment, enforcement, or collection of any tax or duty under a written tax law.

Proposed Effective Date: 1 July 2024

Implication

The provision is intended to support the collection by businesses of personal data relating to customers for verification purposes by the KRA.

Bowmans

02 May 2024