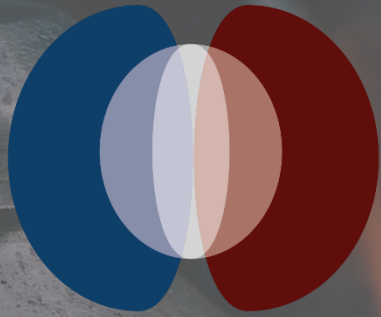


Finance Bill, 2023

A Selective Analysis



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The Finance Bill, 2023, contains various highly investor-friendly amendments. Other than focusing on raising or introducing new taxes, there is an aspect of closing loopholes that were used not to pay tax. This is a suitable tax collection model compared to introducing new or raising taxes, as has always been the usual practice.

The new areas that the Finance Bill, 2023, is focusing on to tax or allow deductions include digital content monetization, digital assets, interest in immovable property, repatriated income, loans issued to manufacturing companies by nonresident persons, nonresident person expenditures arising outside Kenya, post-retirement medical relief fund, rental income, exemptions by entities in manufacturing the human vaccine, automotive industry (local content), mandatory VAT registration for certain entities, among others. By design, the proposed amendment may have business with revenue below KES. 5,000,000 being forced to register for VAT for purposes of dealing with certain entities since most allowable deductions will be based on the VAT Act, 2013 complaint receipts.

Once it becomes a law, various provisions of the Bill will become operational on July 01, 2023, September 01, 2023, and others on January 01, 2024. Our summary only highlights some of the proposed amendments.

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Industry/ Category	Current law	As is or summary of the new proposed amendment	Comments Linking to the Proposed Changes	Timeline
The Income Tax Act				
Gaming Industry.	Income Tax Act (ITA) “winnings” includes winnings of any kind and a reference to the amount or the payment of winnings shall be construed accordingly.	Finance Bill, 2023 (FB) “winnings” means the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act without deducting the amount staked or wagered	The proposed definition of winnings narrows the meaning of “winnings” since it omits the word “include” in favour of “means” and limiting it within the Betting, Lotteries and Gaming Act. The proposed amendment will impact the ITA and the Betting, Lotteries and Gaming Act.	July 01, 2023
Entertainment Industry. Media Industry. Online Commercial Activities.	ITA not in the current Act – <i>as is</i> .	FB 2023 a new definition entailing a number of areas under “digital content monetization.” Digital content monetization will be taxed at the rate of 15% (WHT) on residents.	The proposed definition is meant to capture commercial or revenue generating activities. Some of the areas may be inferred from the current Act but this proposal goes into specifics. It specifically targets Content Creators.	July 01, 2023
Real Estate. Facility Based Industry. Mining & Prospecting Industry.	ITA The current definition under s 3 (3)(i) is limited to mining right, interest in petroleum agreement, mining information or petroleum information.	FB 2023 A new definition of immovable property will cover land and interest on any land. It will include debt secured by mortgage or charge on immovable property, mining right, interest in petroleum agreement, mining information or petroleum information.	The proposed amendment is meant to broaden the meaning of “immovable property” as defined under s 3 (3) (i) of the current ITA. The proposed amendment will result in deleting s 3 (3)(i) of the ITA as per the proposed deletion under s 3 of the proposed Finance Bill.	July 01, 2023
	ITA not in the current Act.	FB 2023 Introduces the definition of a person (includes a natural person, and a company	The current ITA already has a definition on “Company,” which does not factor in unincorporated entities. The word “individual” is also defined under ITA as a “natural person.” The unique aspect about the new proposal is using the term “include” and linking	July 01, 2023

Industry/ Category	Current law	As is or summary of the new proposed amendment	Comments Linking to the Proposed Changes	Timeline
	ITA not in the current Act.	FB 2023 Introduces “related person” to mean <i>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.</i>	“individual” to s 26 (5) of the ITA (is about relatives). The proposal broadens the application of ITA for purposes of enhancing tax collection.	July 01, 2023
Foreign Industry	Exchange ITA There is no limitation on deferring and accumulated losses are considered in computing the amount of revenue reserves.	FB 2023 Proposed deletion of s 4A (1) (ii) (a) & (b) and 1A.	The proposed amendment limits deferring a loss to be claimed to a period of 3 years and deletes a provision that allows accumulated losses to be considered when computing the amount of revenue reserves.	July 01, 2023
Employee Allowances	Travelling ITA	FB 2023 Proposed amendment will require any travelling allowance within the Automobile Association of Kenya standard mileage rate as that which does not fall under employee’s gains and profits. s 5 (2)(a) (iv) a new provision.	The proposal will require the HR and Finance Departments in various organisation to assess their internal policies concerning travelling allowances.	July 01, 2023
Membership Fees	ITA	FB 2023: A new s 5 (2) (fa) is proposed to consider club entrance and subscription fees disallowed against the employer’s income as profits and gains.	This results in deletion of s 16 (2) (a) (v) of the ITA considering there were exemptions under s 15 (2) (v) of the ITA. s 21 of the ITA will equally be amended to indicate that entities engaging in members’ club or trade associations will be considered as running a business.	July 01, 2023
Expenditures by Public Officers	ITA	FB 2023 A new proposed s 5 (4) (fa) <i>any amount paid or granted to a public officer to reimburse an expenditure</i>	The proposal may be misused should this pass as law, particularly where there is no clear verification processes.	July 01, 2023

Industry/ Category	Current law	As is or summary of the new proposed amendment	Comments Linking to the Proposed Changes	Timeline
		<i>incurred for the purpose of performing official duties, notwithstanding the ownership or control of any assets purchased.</i>		
Employee Share Ownership/Option Scheme	ITA s 5 (6) (c) – partly – addresses shares granted by the employer and whereby the price was to be agreed with Commissioner before the exercising the options.	FB 2023 The proposal amendment adopts the use of “options” compared to shares and the exercising of an option will happen before engaging the Commissioner.	The term options is favourable as it is fairly wide on the various incentive plans that entities may adopt in favour of their employees.	January 01, 2024
	ITA not in the current ITA	FB 2023 The proposed amendment is introducing a tax on employee awarded shares by an eligible start-up payable at a defined period per the ITA.	The classification means that the Commissioner considers such an award as employment income that is taxable. The other key factor is “eligible start-up,” which has an annual return of not more than KES. 100 million; not a management, professional or training business; not resulting from a split or restructuring of existing entity; and in existence of a period of not more than five years.	July 01, 2023
Repatriated Income	ITA not in the current ITA	FB 2023 The proposed s 7A will require a nonresident person carrying on business in Kenya through a Permanent Establishment (PE) to pay tax on repatriated income for the year of income. The applicable tax will be separate from the PE tax.	The applicable formula to establish repatriated income $R=A_1 + (P + T) - A_2$ R: repatriated profit. A₁: net assets at the beginning of the year. P: net profit for the year of income calculated in accordance with generally accepted accounting principles. T: tax payable on the chargeable income. A₂: net assets at the end of the year.	January 01, 2024
WHT on non-resident person	ITA not in the current ITA	FB 2023 The proposed amendment will limit the refunding of WHT or being deductible against the income where an audit adjustment has been made regarding that payment.	This will may affect persons using East African Community (EAC) Corporate Structures (<i>particularly payments from Tanzania</i>) for payments made through Kenya.	July 01, 2023

Industry/ Category	Current law	As is or summary of the new proposed amendment	Comments Linking to the Proposed Changes	Timeline
Trust Income	ITA s 11 (3A) the provision provides where tax would apply to registered trusts.	FB 2023 s 8 of the Finance Bill proposes to delete s 11 (3A) of the ITA.	The proposed deletion is essential as it defeated the purposes of enhancing the use of a trust particularly on income below KES. 10 million and payments concerning education, medical treatment or early adulthood housing.	July 01, 2023
Turnover tax	ITA s 12C (1) provides for a range between KES. 1,000,001 – KES. 50,000,000 in any year of income.	FB 2023 Proposes an amendment to change amount to KES. 500,001 to KES. 15,000,000.	The proposal in a way narrows down to a certain revenue category since a lot of SMEs fall within the range proposed.	July 01, 2023
Digital Asset Tax (cryptocurrencies, among others)	ITA not in the current ITA	FB 2023 There is a tax applicable on any income made based on transfer or exchange of digital tax. The tax is deducted at source and non-resident person owning such a platform will need to register under simplified tax regime. It requires payment to the government to be done within 24 hours of making the deduction.	The major digital assets are cryptocurrencies/ digital coins/ tokens, NFTs, among others. The proposed tax will be WHT at 3%.	January 01, 2024 September 01, 2023 <i>[there is a need for the review of the start date]</i>
Allowed deductions	ITA s 15 (2): the amount considered by the Commissioner to be just and reasonable as representing the diminution in value of any implement, utensil or similar article, not being machinery or plant in respect of which a deduction may be made under the Second Schedule, employed in the production of gains or profits	FB 2023 the proposed amendment deletes the current subclause and replaces it with a new provision.	The proposed provision removes the role of the Commissioner and also indicates that allowed deductions under the Second Schedule will be at 100% in that year of income.	July 01, 2023
Allowed deductions	ITA s 15 (7) (e) (iii): employment the gains or profits from which is wife's employment income, profession the gains or profits from which is	FB 2023 deleted		July 01, 2023

Industry/ Category	Current law	As is or summary of the new proposed amendment	Comments Linking to the Proposed Changes	Timeline
	wife's professional income and wife's self-employment the gains or profits from which is wife's self-employment income (<i>sic</i>).			
Deductions allowed	not ITA not in the current ITA	<p>FB 2023</p> <p>Any expenditure or loss where the invoices are not from KRA Tax approved systems save where there are certain exemptions under Tax Procedures Act, 2015.</p> <p>s 12 of FB to amend s 16 of ITA</p>	<p>This means that most businesses that need to apply for deductions on their respective expenditures or loses will need to transact with entities that are correctly registered with KRA.</p> <p>This is likely to affect small businesses that operate below KES. 5,000,000 per given 12 months, and have not registered for VAT obligation.</p>	January 01, 2024
Loans issued to manufacturing companies by non-resident person	ITA s 16 (2) (j) (G) & (H)	<p>FB 2023</p> <p>The proposed amendment replaces "related persons and third parties" with "non-resident" and further opening room to companies engaging in manufacturing to have better options on deductions.</p>	<p>The current provision uses "related persons and third parties" and restricts certain manufacturing companies from claiming deductions on gross interest paid or payable. The amendment changes this but only to gross interest paid or payable to non-resident person.</p> <p>Therefore, this means that it will not be applicable to local loans.</p>	January 01, 2023
Nonresident person: expenditures	ITA s 18 (14) provides that nonresident persons cannot apply deductions based on expenditures arising outside Kenya.	<p>FB 2023</p> <p>The proposed amendment will delete this provision.</p>	This will broaden deductible expenditures for nonresident businesses.	July 01, 2023
Qualifying Intellectual Property income	ITA not in the current ITA	<p>FB 2023</p> <p>The formula to be used in qualifying intellectual property income that is subject to the preferential tax rate.</p> <p>$I = (Q/T) \times P$</p> <p>I: income receiving tax benefits.</p>	<p>There might be a typographical error. There is no s 18A (3) of the ITA that leads in introduction of s 18A (4) of the ITA.</p> <p>Kenya has Transfer Pricing Rules but the same might have gaps that require further regulation.</p> <p>For purposes of this provision, IP losses will be deducted from IP income.</p>	January 01, 2024

Industry/ Category	Current law	As is or summary of the new proposed amendment	Comments Linking to the Proposed Changes	Timeline
Country by country reporting	ITA s 18D (1)	<p>Q: R&D expenditures by taxpayer (excluding transaction acquisition costs and related party outsourcing costs).</p> <p>T: R&D expenditures by taxpayer (including transaction acquisition costs and related party outsourcing costs).</p> <p>P: is intellectual property income including royalties, capital gains and any other income from the sale of an intellectual property asset including embedded intellectual property income calculated under transfer pricing principles</p> <p>FB 2023 Targets entities that their consolidated group turnover is at least KES. 95 billion, and the parent entity is not obligated to file country by country report at its local jurisdiction; regardless of having an international tax agreement with Kenya, it lacks a competent authority agreement with Kenya at the time of filing the country-by-country report; or presence of systematic failure of the ultimate parent entity's jurisdiction.</p>	<p>The provision basically targets corporate structuring that benefits certain entities that delve in thorough tax structures.</p> <p>The amendment will result in redefining what amounts to "ultimate entity."</p>	July 01, 2023
Post Retirement Medical Relief Fund	ITA not in the current ITA	<p>FB 2023 It will allow a resident who has worked for a full year of a given income year entitlement to post-retirement medical fund relief if such a resident made such contributions to a fund.</p>	<p>The limitations for the Post Retirement Medical Relief Fund will be about 15% of the contributed amount or KES. 60,000 PA, whichever is lower.</p>	January 01, 2024

Industry/ Category	Current law	As is or summary of the new proposed amendment	Comments Linking to the Proposed Changes	Timeline
Deductions from certain income	ITA not in the current ITA	<p>FB 2023 Proposes to introduce deductions on payments made to a resident or a PE in Kenya concerning sales promotions, marketing and advertising services, and digital content monetization.</p> <p>Sales promotion, marketing, advertising services: payments above KES. 24,000 will attract 5% WHT.</p>	Any payment falling under sales promotion, marketing and advertising services will be subject to tax deductions under WHT category at source.	July 01, 2023
Rental Income	ITA not in the current ITA	<p>FB 2023 The proposed amendments also provide for deduction of tax by the person (must be appointed by the Commissioner) receiving rent on behalf of the owner.</p>	In the event of such deductions, it is required that the amount be posted with the Commissioner within 24 hours.	July 01, 2023
Income of a person assessed on him	ITA s 45	<p>FB 2023 Proposes to repeal the provision.</p>	The provision indicated that income of a woman living with her husband will be considered to be the husband's income for purposes of tax unless the wife opts to file her returns separately.	July 01, 2023
First Exemptions	Schedule: ITA not in the current ITA	<p>FB 2023 The proposed amendment provides further definition of entities (<i>institution, body of persons or irrevocable trust, of a public character</i>) that enjoy exemptions under paragraph 10 of the 1st Schedule (those focusing on benefiting the public).</p>	The entities that need to take advantage of the exemptions will need to consider what amounts to "benefiting the public" or "of public character."	July 01, 2023
First Exemptions	Schedule: ITA Paragraph 65 of the 1 st Schedule to be deleted and new provisions to be introduced.	<p>FB 2023 Royalties paid to non-resident person by an entity engaging in human vaccine manufacturing.</p>	<p>This will benefit multinationals established or looking forward to establishing manufacturing (human vaccines) facilities in Kenya.</p> <p>There is a further consideration to add a new provision under the 3rd Schedule in favour of</p>	July 01, 2023

Industry/ Category	Current law	As is or summary of the new proposed amendment	Comments Linking to the Proposed Changes	Timeline
Second Schedule: investment allowance	ITA not in the current ITA	Interest paid by an entity engaging in human vaccine manufacturing. FB 2023 Proposes to introduce industrial building (10%) and dock (10%, in equal instalments). Limitations to the application of paragraph 1A.	entities manufacturing human vaccine whereby the WHT to residents will be at 10%. The proposed amendment factors in a business model other than the investment amount done outside Nairobi City County and Mombasa County.	January 01, 2024
Third Schedule: Rates of Personal Reliefs and Tax	ITA not in the current ITA	FB 2023 Proposes a new tax band (35%) applicable on all income above KES. 6,000,000.	The relevant HR and Finance Departments will need to update their staff of this possible event should the proposal become law. There is a high likelihood of contract restructuring taking place due to these developments and a lot of staff having to negotiate new terms during appraisal.	July 01, 2023
Third Schedule: Auto Industry	ITA Paragraph 2 (j) of 3 rd Schedule	FB 2023 The proposed changes will provide meaning to “local content.” Local content means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.	The local content may have presented presumptions. The definition may provide an opportunity for most companies to achieve the required targets.	July 01, 2023
Third Schedule: Human Vaccine	ITA not in the current ITA	FB 2023 in respect of a company undertaking the manufacture of human vaccines, ten per cent.	The proposal provides that a resident company manufacturing human vaccines will have a corporate tax rate at 10%.	January 01, 2024
Third Schedule: WHT on residents	ITA Paragraph 5 (ja) of 3 rd Schedule	FB 2023 Proposed to revise the WHT from 10% to 7.5%	It is applicable to payments made for purposes of use or occupying immovable property.	January 01, 2024
Fourth Schedule (updating Institutions)	ITA not in the current ITA	FB 2023 Proposes to add Mortgage Refinance entities that are licensed as per the Central Bank of Kenya Act.	Entities falling under this category may start assessing the ITA and any other regulations on what benefits and risks the entities will achieve.	January 01, 2024

Industry/ Category	Current law	As is or summary of the new proposed amendment	Comments Linking to the Proposed Changes	Timeline
Eighth Schedule: Taxation of gains	ITA Amendment of the current paragraph 2	FB 2023 Proposes the deletion of the current provision. The proposed changes still factors the initial provision and adds the need to capture any interest (<i>including interests in a partnership or trust</i>) that may result in having at least 20% interest in immovable property.	It may impact certain Joint Venture Project structuring measures or enhance scrutiny towards such projects where there is a Landowner and Financier/Developer – it is also key when factoring in the proposed amendments under s 26 (d) of the FB 2023.	July 01, 2023
Eighth Schedule: Taxation of gains	ITA Amendment of the current paragraph 11A	FB 2023 Capital Gains Tax concerning property transfer is due on receipt of the full purchase price by the vendor, or registration of the transfer.	The proposed amendment will cure the arising concerns on paying CGT prior to a successful transaction concerning purchase of a property.	July 01, 2023
Eighth Schedule: Taxation of gains (exemption)	ITA Amendment of the current paragraph 13(c)	FB 2023 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.	There are limitations on certain restructuring activities – going beyond the limitations results in a transaction being considered outside the exemptions.	July 01, 2023
Ninth Schedule: indirect transfer of interest	ITA Amendment of the current paragraph 14(a)	FB 2023 The applicable percentage being 10% will be revised to 20% or more for purposes of issuing a notice of change in the underlying ownership or a licensee or contractor.	The proposal is applicable towards extractive industry (mining and petroleum operations).	July 01, 2023
VALUE ADDED TAX ACT				
Charge to tax	Value Added Tax Act (VAT Act) Affected provisions s 5 (2) (aa) and (ab) of the VAT Act	FB 2023 The proposed Bill will delete s 5 (2) (aa) and (ab) of the VAT Act.	The applicable tax rates were 8% for items falling under the two subclauses: (aa) items on transition while (ab) was on liquefied petroleum gas including propane. The same, like liquefied petroleum, is reintroduced under FB 2023, as exempted supplies.	July 01, 2023

Industry/ Category	Current law	As is or summary of the new proposed amendment	Comments Linking to the Proposed Changes	Timeline
Place of supply of services	VAT Act The use of “is not registered person” is subject of amendment	FB 2023 The proposed amendment will change the provision to “a registered or unregistered person.”	The amendment will expand the base.	July 01, 2023
Credit for input tax against output tax	VAT Act The amendment on s 17 (2)	FB 2023 The proposal intends to have the disjunction “or” deleted and replaced by a conjunctive “and.”	The proposed amendment is meant to apply both subclauses of s 17 (2) of the VAT Act as a bare minimum of meeting the statutory qualification.	July 01, 2023
VAT registration	VAT Act The amendment of s 34 (1).	FB 2023 The proposal provides that 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.	A person operating under that particular category is limited on enjoying the benefits of not being VAT registered for not having achieved the KES. 5,000,000 gross turnover in any period of twelve months.	July 01, 2023
Keeping of Records	VAT Act The amendment of s 43 (1).	FB 2023 Proposes the deletion of the phrase that limits the documents to be kept in Kenya.	Considering that various entities rely on multiple solution providers, the servers or database may be outside Kenya.	July 01, 2023
THE TAX APPEALS TRIBUNAL ACT				
Procedure for Appeal	The Tax Appeals Tribunal Act (TATA) s 13 (2) entails a limitation on not allowing production of additional evidence.	FB 2023 The proposed Bill introduces as of right for a person appealing to introduce more information.	This will help a party have proper documents before opting to appeal to the High Court should the decision of the Tribunal remain unfavourable.	July 01, 2023
Provision of security	TATA not in the current TATA	FB 2023 The proposed Bill introduces what will amount to a security (20% of the value dispute being appealed) during an appeal and should the appellant (not being the Commissioner) win,	In certain instances, the amounts in dispute during an appeal tend to be significant that may affect a business’ sustainability. Therefore, capping the amount to a percentage of 20% is reasonable.	July 01, 2023

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		the amount should be refunded within 30 days.		
THE EXCISE DUTY ACT				
Inflation based adjustments	The Excise Duty Act (EDA) The provision provides for the Commissioner with authority, upon approval of the Cabinet Secretary, to adjust certain rates in a year to factor in inflation – it is subject to the approval of the National Assembly.	FB 2023 Proposes to repeal that particular provision (s 10 of EDA).		July 01, 2023
Suspension of license	EDA s 20 (5) (b) provides the Commissioner authority to inform a person to take a certain action to remedy a certain issue to revoke the suspension.	FB 2023 The proposed amendment intends to provide that such a notice shall not be that of less than 14 days.	The provision of a minimum notice period helps a taxpayer to review the notice and take the necessary action.	July 01, 2023
Offences concerning excise stamps and other markings	EDA s 40 provides for the offences concerning excise stamps but it is general in nature.	FB 2023 It proposes a new subsection [s 28 (6)] that provides for offences concerning excise stamps and other markings. There are about 7 offences. If one is found liable, on conviction, the person will be fined an amount not exceeding KES. 5,000,000 or imprisoned for a period not exceeding 3 years or both.	The proposed amendment is specific – factors in the challenges that the Commissioner has been experiencing concerning Excise Stamps and other markings. The proposed amendment will result in repealing s 40 of the EDA.	July 01, 2023
Certain excise duty must be paid within 24 hours.	EDA not in the current EDA	FB 2023 The proposed amendment will require certain excise duty to be paid within 24 hours after closure of transaction day (midnight of that day).	The Commissioner may Gazette any other industry to pay excise duty within 24 hours. Part III of the 1 st Schedule of the EDA will also be amended to add “gaming” when defining “ amount wagered or staked. ”	July 01, 2023

Industry/ Category	Current law	As is or summary of the new proposed amendment	Comments Linking to the Proposed Changes	Timeline
Excisable Services	EDA Part II of the 1 st Schedule	<p>The gambling industry is one of the industries required to make payment within 24 hours.</p> <p>FB 2023 Telephone & Internet Data: from 20% to 15%</p> <p>Fees charged for money transfer services (<i>banks, money transfer agencies, & financial service providers</i>): from 20% to 15%</p> <p>Fees charged for money transfer services (<i>cellular phones or payment service provides licensed under the National Payment System Act, 2011</i>): from 12% to 15%.</p> <p>Amount wagered or staked (betting): from 7.5% to 20%</p> <p>Amount wagered or staked (gaming): from 7.5% to 20%</p> <p>Prize competition (amount paid or charged to participate: from 7.5% to 20%</p> <p>Lottery (excluding charitable lotteries) of the amount paid or charged to buy the lottery ticket: from 7.5% to 20%.</p> <p>Digital Lenders (any amount charged in respect of lending): 20%</p> <p>Advertisements concerning alcoholic beverages or gambling or betting and related products: 15%</p>	<p>Under money transfer services by the cellular phones, products under the National Payment Systems Act has been added. This is quite common since most solutions offering those particular solutions secure licenses from Communications Authority and authorization from Central Bank of Kenya through the NPS Act. However, certain payment solutions do not require Communications Authority's license, therefore, bypassing and only focusing on NPS Act.</p> <p>The provision covering digital lenders will be revised from excise duty on the fees to any amount charged by the digital lender.</p> <p>Excise duty is introduced on advertisements touching on alcoholic beverages and gambling/betting related products.</p>	July 01, 2023

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Excise duty on imported cellular phones	EDA Rearrangement	FB 2023 Retains excise duty on imported phones at 10% by introducing the same under Part 1 of the 1 st Schedule of EDA.	The provision providing for excisable duty under Part II of the 1 st Schedule of EDA is deleted.	July 01, 2023
THE TAX PROCEDURES ACT				
International Tax Agreement/ Treaty	The Tax Procedures Act (TPA) not in the current TPA	FB 2023 The proposed amendment will add a new subsection on International Tax Agreement (ITA)/Treaty (ITT), which shall give the Commissioner the rights to recover or collect a tax claim.	The Commissioner is expanding its authority under any ITA/ITT to recover or collect taxes by establishing a procedure that will guide it in pursuing such interests.	July 01, 2023
Trustee of a Trust	TPA not in the current TPA	FB 2023 A Kenya resident trustee of a trust will report to the Commissioner on any trust managed regardless of the income being taxable or not.	The Commissioner will have the benefit of collecting more data concerning related operations, which may result in formulating more tax policies.	July 01, 2023
Electronic tax invoices	TPA not in the current TPA	FB 2023 The proposed amendment gives the Commissioner an option to have a software solution that can be used to list inventory and tax invoices generated.	The Commissioner already has a similar solution (tax invoices) in place. This may be an option to push people to adopt it due to its simplicity in tax reporting. The mandatory nature results from the intended substitution s 86 with a new section that will have penalties of up to KES. 1,000,000 or 10 times the tax due (whichever is higher).	September 01, 2023
Amendment assessment	of TPA s 31 (6) provides that the assessment will be on the original assessment.	FB 2023 The proposed amendment will delete the word "original."	The deletion of the word "original" means that the Commissioner may review any assessment, which means that the newly provided assessment may be re-reviewed instead of starting the assessment from the initial (original) assessment.	July 01, 2023

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Relief due to difficulty or doubt in tax recovery	TPA s 37	FB 2023 The proposed amendment will repeal s 37 of the TPA.	The Commissioner's approach will be that tax must be recovered unless the ITA/ITT at a State-State level decides otherwise. Furthermore, considering measures being adopted, the Commissioner will be having a lot of data to assess the conduct of a person.	July 01, 2023
Limitation on recovering interest, penalties or fines	TPA not in the current TPA	FB 2023 The proposed amendment will make the Commissioner refrain from claiming interests, penalties or fines on tax debt if a person has paid the principal tax before December 31, 2022. If the principal tax had not been paid as of December 31, 2022, a person will apply for amnesty of interest, penalties or fines on the unpaid tax and propose a payment plan.	One must have paid the principal tax by at least June 30, 2024, not incur further tax debt and signs a commitment letter for paying all outstanding amount. The provision does not favour anyone that had paid part of the principal tax due December 31, 2022, and who had already been granted amnesty. The amendment will result in deleting s 89 (6), (7) and (8) [it addressed application to the Commissioner on remission of penalties or interests payable]	July 01, 2023
Security on property for unpaid tax	TPA s 40 (1)	FB 2023 The proposed amendment will result in deleting s 40 (1) and introducing s 40 (2A).	The deletion does not limit the Commissioner's rights but makes it more assertive.	
VAT WHT Agent	TPA s 42A (1) and (4B) the 2% WHT	FB 2023 The 2% WHT will be applied to any entity regardless of their payee's investment value in Kenya.	The payment period of the amount will be revised from on or before 20 th day of the following month to within 3 days after deduction.	July 01, 2023
Appointment of Rental Income Tax Agents	TPA not in the current TPA	FB 2023 Proposes to allow the Commissioner to appoint an agent for purposes of the rent income tax on its behalf.	The proposal is in line with the proposed amendment under the Income Tax Act on rental collection by appointed agents.	July 01, 2023
Settlement outside of Court or Tribunal	TPA s 55 (1) provides for a period of 90	FB 2023 Proposes to change the 90 days to 120 days.	The proposal helps the Commissioner and taxpayer to have ample time to address the arising issues with a view of settlement.	July 01, 2023

Industry/ Category	Current law	As is or summary of the new proposed amendment	Comments Linking to the Proposed Changes	Timeline
	days from the date the Court or Tribunal allows settlement.			
Objections and appeals	TPA s 56 (3) on additional new grounds.	FB 2023 Proposes to delete <i>“unless the Tribunal or Court allows the person to add new grounds.”</i>	The proposal is different from that of the Tax Tribunal Appeals Act, which allows provision of additional evidentiary material to support a position in a given case.	July 01, 2023
Data Management Systems	TPA not in the current TPA	FB 2023 Proposes that the Commissioner may establish a data management and reporting system to make transaction reporting more efficient.		September 01, 2023
Tax Shortfall Penalty	TPA s 84 (2) the penalty is 75% of the tax if deliberately omitted.	FB 2023 Proposes to revise the same to double.		July 01, 2023
Sanctions for offences	TPA s 104 (1)	FB 2023 Proposes to amend by deleting “and” and replacing it with “or.”	This is more of typographical error being addressed to create a disjunction between pecuniary fine and imprisonment (giving discretion) – it does not restrict the use of both options.	July 01, 2023
Civil and criminal proceedings	TPA not in the current TPA	FB 2023 Proposes that where there is a criminal and civil case on similar facts and person, that will not result in any stay, prohibition or delay in either of the cases.	The balance of probabilities in criminal and civil cases tend to be different. However, under tax disputes is somewhat higher compared to any standard civil case. Furthermore, courts are reluctant to issue conflicting decisions for such cases where the criminal case and civil case have nearly similar standards of proof.	July 01, 2023
THE MISCELLANEOUS FEES AND LEVIES ACT				
Import Declaration Fee (IDF)	The Miscellaneous Fees and Levies Act (MFLA) s 7	FB 2023 Proposes to revise the import declaration fee from 3.5% to 2.5%, which is payable by the importer. Proceeds to delete s 7 (2A) and (3) (b)	It means that products like raw materials and intermediate products imported by manufacturers and input for construction of houses under affordable housing schemes and goods imported under the East African	July 01, 2023

Industry/ Category	Current law	As is or summary of the new proposed amendment	Comments Linking to the Proposed Changes	Timeline
			Community Duty Remission Scheme will no longer rely on the 1.5% IDF.	
Export and Investment Promotion Levy	MFLA not in the current MFLA	FB 2023 Proposes a tax known as Export and Investment Promotion Levy applicable to goods under 3 rd Schedule but not on those that arise from East African Community Partner States and meet the East African Community Rules of Origin.	Reasons provided: the purpose of the levy shall be to provide funds to boost manufacturing, increase exports, create jobs, save on foreign exchange and promote investments. It applies to goods entering Kenya for home use.	July 01, 2023
Railway Development Levy	MFLA s 8 of the MFLA	FB 2023 Proposes to revise the rate of the Railway Development Levy from 2.5% to 1.5%.	It is a reduction, which may have a positive implication to most importers and consumers; however, the application or introduction of Export and Investment Promotion Levy.	July 01, 2023
OTHER LAWS				
The Employment Act	The Employment Act	FB 2023 Proposes a new provision on contribution made against the monthly basic salary of an employee and paid to the National Housing Development Fund. The employer and employee will each contribute 3%. The total amount per employer and employee shall not exceed KES. 5,000 per month.	The proposal provides that the benefits of the employee eligible for affordable housing contribution will be used to finance purchase of a house under affordable housing scheme while those not eligible will access the funds per the proposed s 31B under s 76 of the FB 2023.	July 01, 2023
Unclaimed Assets Act	Financial Unclaimed Financial Assets Act s 28 (5)	FB 2023 Proposes the authority of the UFAA to be able to make payments.	This may be helpful in succession cases or garnishee proceedings.	July 01, 2023