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LEGAL ALERT

Analysis of the Tax Changes Proposed by the Finance Bill, 2024

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Introduction

The Finance Bill, 2024 (the Bill) was published and gazetted on 9 May 2024. The Bill proposes to make a raft of amendments to tax-related laws in Kenya, including the Income Tax Act (Chapter 470, Laws of Kenya), the Value Added Tax Act, 2013, the Tax Procedures Act, 2015, the Miscellaneous Fees and Levies Act, 2016 and the Excise Duty Act, 2015.

Generally, bills come into effect either on the date of assent by the President or on the date of operation specified within the bill, whichever is earlier. We note that in the Bill, some of the proposed amendments, particularly those relating to income tax, have an effective date of 1 January 2025, while most of the other proposed amendments have been indicated to come into force on 1 July 2024 and 1 September 2024.

The proposals in the Bill can be seen to target an increased tax base and enhancing revenue collection. These include the proposed introduction of the Significant Economic Presence Tax and Motor Vehicle Tax, and proposed increase in the rates of excise duty on data, money transfer services, and betting and gaming activities. The Bill also proposes to introduce Advance Pricing Agreements into the transfer pricing regime and repeal various tax exemptions, including income tax exemptions on infrastructure bonds, as well as Value Added Tax (VAT) exemptions on various financial services and sector-specific exemptions that are currently in place in the tourism, health and e-mobility sectors.

We have set out below a highlight of the key proposed amendments in the Bill as well as their potential impact on businesses in Kenya.

1. PROPOSED AMENDMENTS TO THE INCOME TAX ACT

The Bill has proposed various changes under the Income Tax Act (the ITA) which are intended to increase revenue collection through introduction of new taxes and deletion of tax exemptions, reliefs and incentives that are enjoyed under the current income tax regime.

By way of background, it was expected that going forward, tax changes would be in line with the Government's Medium Term Revenue Strategy for FY 2024/25 to 2026/27 published by the National Treasury and Economic Planning in September 2023 (the MTRS). While we note that some of the changes such as the review of the income tax exemptions are in line with the MTRS, we also note that some of the highly anticipated changes expected through the implementation of the MTRS such as reduction of the corporate tax rate from 30% to 25% and alignment of the non-resident withholding tax rates with the corporate tax rate, are not among the proposed changes under the Bill.

We have highlighted the income tax proposals below:

A. Measures to Widen the Tax Base and Enhance Revenue Collection

a) Repeal of Digital Services Tax and Replacement with Significant Economic Presence Tax on Taxation of Digital Services

Proposed Effective Date: 1 January 2025

The Bill proposes to amend the ITA to repeal the provisions relating to Digital Service Tax (DST) which applies at the rate of 1.5% of the gross transaction value and replace it with a new deemed profit-based taxing right based on significant economic presence known as the Significant Economic Presence Tax (SEPT). The rationale for SEPT is similar to DST as it is proposed to apply to non-resident persons who derive income from the provision of services in Kenya through a business carried out over a digital marketplace.

While the tax base for DST is the gross transaction value of an eligible transaction, SEPT is proposed to apply at the rate of 30% on a deemed taxable profit of 20%. The effective tax rate for SEPT will therefore be equivalent to 6% of the gross turnover of the non-resident person which is a significant increase from the current rate of 1.5%. Noting that the taxable profit is deemed and not based on actual profit, a company with a lower taxable profit will therefore suffer a much higher tax on deemed profitability.

The Bill does not define "significant economic presence" or "gross turnover" but authorises the Cabinet Secretary for Treasury and National Planning to make regulations for better implementation of this provision. The Bill further proposes that SEPT be paid monthly upon the filing of a return on or before the 20th day of the following month.

The government has been under pressure to comply with the global consensus arrived at by the Organisation for Economic Cooperation and Development (OECD) G20 Inclusive Framework on Base Erosion and Shifting (BEPS) of which Kenya is a member. The OECD/G20 Inclusive Framework on BEPS provides for a two-pillar solution in attempting to ensure that large and highly profitable multinational companies (MNEs) pay their fair share of taxes in their market jurisdictions. Pillar One aims at taxing large MNEs in the countries where they derive significant revenues even if the MNE does not have a physical presence in the country.

The proposed introduction of SEPT to replace DST signifies Kenya's resolve to roll back the unilateral measures to impose DST by adopting a multilateral approach in ensuring effective taxation of MNEs that derive income from Kenya. Noting the high rate that will apply in respect of SEPT, this may be detrimental to Kenya being a fintech hub. If the proposal for introduction of SEPT is adopted, its implementation will therefore need to be carefully structured in accordance with international tax law practices.

b) Introduction of Minimum Top Up Tax

Proposed Effective Date: 1 July 2024

The Bill proposes to introduce a new tax known as a Minimum Top-Up Tax to be paid by a person or entity resident in Kenya or with a permanent establishment in Kenya, which is a member of a multinational group where the combined effective tax rate for that person for the year is less than 15% (referred to as a 'covered person'). For the Minimum Top Up Tax to apply, the group should have a consolidated annual turnover of EUR 750 million 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 relevant year of income.

The Bill states that the combined effective tax rate is derived as a percentage of the sum of the adjusted covered taxes, divided by the sum of all net income or loss for the year of income. Therefore, the Minimum Top-Up Tax payable shall be the difference between 15% of the net income or loss of a covered person and the combined effective tax paid using the computation above, to the extent that the effective tax rate is lower than 15%. Certain classes of persons including public entities not engaged in business, tax exempt persons, pension funds, and non-operating investment holding companies, amongst others, are excluded from the application of the Minimum Top Up Tax.

The proposed introduction of Minimum Top Up Tax is to mimic the proposed global minimum tax developed under the Global Anti-Base Erosion and Profit Shifting (BEPS) Rules from the OECD/G20 with the objective of addressing the tax challenges arising from the digitalisation of the global economy. The Global Anti-Base Erosion Rules (GloBE) are designed to ensure that large multinational enterprise (MNEs) pay a global minimum tax on the income arising in each of the jurisdictions where they operate.

With the proposed introduction of Minimum Top Up Tax in Kenya, mergers and acquisition transactions with Kenyan targets would need to be structured carefully to cover the potential impact of an acquirer making the target a covered person by virtue of the target being part of the group of the acquirer post completion.

c) Introduction of Advance Pricing Agreements Programme in the Transfer Pricing Regime

Proposed Effective Date: 1 January 2025

The Bill proposes to empower the Commissioner to enter into advance pricing agreements (APAs) with a taxpayer who undertakes transactions with a related party and/or transactions with a person operating in preferential regime for which transfer pricing rules are required to be complied with. The APAs entered into shall be valid for a period of five years and the same may be voided if the Commissioner establishes misrepresentation of facts by the taxpayer.

This is a welcome and positive move towards establishing a business-friendly environment as it will provide the much-needed prior clarity and certainty as to how the related party transactions would be treated from a tax perspective, and potentially reduce tax disputes. This proposed introduction of APAs also aligns with other EAC countries such as Rwanda, Uganda and Tanzania who have introduced APAs in their domestic tax legislation. However, capacity constraints have hampered tax authorities in the region from implementing the APA programme, and we hope that the KRA will fast track the roll out of the APA programme and publish amended Transfer Pricing Rules which provide taxpayers with detailed guidance on the process and criteria for qualifying for the programme.

d) Introduction of Motor Vehicle Tax

Proposed Effective Date: 1 July 2024

As proposed in the MTRS, the Bill proposes to introduce a new tax known as Motor Vehicle Tax which will be payable on each motor vehicle at the time of issuance of an insurance cover. While it is noted that the MTRS did not stipulate a rate, the Bill proposes the tax will be applicable at the rate of 2.5% of the value of the motor vehicle, which will be determined based on the make, model, engine capacity and year of manufacture of the vehicle. The Bill proposes a minimum tax amount of KES 5,000 and a capped maximum of KES 100,000 payable on each vehicle. The tax applies across both electric vehicles and internal combustion engine vehicles.

The obligation to collect and remit the tax will be on the insurer of the motor vehicle who will be required to remit the tax within five days of issuing the insurance cover, failure to which the insurer will be liable to pay a penalty equivalent to 50% of the uncollected tax and the actual amount of uncollected tax. Ambulances, motor vehicles owned by government, the government security agencies or a person exempt under the Privileges and Immunities Act are excluded from the scope of this tax.

The Bill provides that the Commissioner may prescribe guidelines for determining the valuation of a motor vehicle. In the meantime, it would be expected that the insurers would use their accredited valuers who they ordinarily use to determine the market value of a motor vehicle for insurance purposes.

The proposed tax would result in double taxation for commercial vehicles, which are already subject to advance tax under section 12A of the ITA. The proposed tax is also likely to discourage motor vehicle owners from taking comprehensive insurance, noting that the high premium rates will be increased by a further 2.5%. If this proposal is passed into law, the tax is likely to have a significant impact on insurance penetration in Kenya (currently estimated at 3% and is one of the lowest in the region), as well as increase the cost of doing business for insurance companies, as insurers will be required to invest in systems reconfigurations and additional personnel to handle the compliance aspects, noting the significant penalties which are proposed for non-compliance.

e) *Withholding Tax on Income from Digital Marketplaces*

Proposed Effective Date: 1 July 2024

The Bill proposes to introduce withholding tax (WHT) on income and payments made or facilitated by residents and non-residents who own or operate "digital marketplaces" or "platforms" in respect of digital content monetisation, goods, property or services. The Bill further proposes to enhance the definition of "digital content monetisation" to include additional activities such as the offering of material electronically through any medium or channel, creative works, creating or sharing of the material or any other material that is not exempt.

The Bill proposes to amend the definition of a "digital marketplace" to mean an online or electronic platform which enables a person to sell or provide goods, property or services and has introduced a list of such services to include ride hailing services, food delivery services, freelance services, professional services, rental services, task-based services and any other service that is not tax exempt. Therefore, payments made or facilitated by persons who own such media shall be deemed to be income earned in or derived from Kenya which would be subject to tax in Kenya.

The Bill proposes to introduce WHT on payments made to a resident and non-resident person for making or facilitating payments on a digital marketplace at the rate of 5% and 20% respectively.

The proposed amendments are aimed at widening the tax base in the digital space and ensuring tax compliance by persons earning income from digital marketplaces.

f) Supply of Goods to Public Entities to be Subject to Withholding Tax

Proposed Effective Date: 1 July 2024

The Bill proposes to introduce WHT on the gross payments received by a person from the supply of goods to a public entity. The term 'public entity' is defined to mean a ministry, state department, state corporation, county department or agency of the national and county Government. The public entities will be required to deduct WHT from the payments made to the supplier at the rate of 5% for a non-resident supplier and 3% for a resident supplier or a supplier with a permanent establishment in Kenya.

Similar to the proposed introduction of WHT on income earned from digital marketplaces, the proposed introduction of WHT on the supply of goods to public entities is aimed at ensuring tax compliance by suppliers of goods to public entities as WHT will provide visibility to the taxman on the income earned.

g) Definition of Royalties Expanded

Proposed Effective Date: 1 July 2024

The term "royalty" is defined in the ITA to mean a payment made as a consideration for the use or right to use copyrights, cinematograph films, patents, trademarks, designs or models, plans, formulas or processes, and industrial, commercial or scientific equipment, or for information concerning such equipment or experience.

The Bill proposes to amend the definition of "royalty" to also include payments made for use of any software, whether proprietary or off-the-shelf, license, development, training, maintenance, or support fees, including the distribution of the software.

The proposed amendment is aimed at providing clarity on the nature of the consideration payable on acquisition of software for distribution, which has been litigated in a number of cases, including *Seven Seas Technologies v. Commissioner of Domestic Taxes (Income Tax Appeal No. 8 of 2017)*.

We point out that the proposed amendments would not only contradict the current jurisprudence established by Kenyan courts but would also go against international best practice, including guidance from the OECD, which provides that the distribution of software is not equivalent to exploitation of the software and therefore would not be a royalty payment.

B. Clean-Ups in Relation to the Affordable Housing Program

Proposed Effective Date: 1 July 202

Following the introduction of the Affordable Housing Levy (the AHL) by the Finance Act, 2023, the Affordable Housing Act, 2024 (AHA) was enacted on 19 March 2024. AHL is now imposed under the AHA to facilitate the provision of affordable housing and institutional housing as part of the government's development agenda. Our analysis on the key provisions of the AHA can be found here.

a) Scrapping of the Affordable Housing Relief

Section 30A of the ITA provides affordable housing relief to resident individuals at the rate of 15% of the employee's contribution subject to a cap of KES 108,000 a year in relation to the affordable housing scheme. The AHA introduced a new provision to section 30A of the ITA effective 19 March 2024 providing a housing relief to resident individuals who pay AHL in the computation of their taxes in a year of income.

The Bill has however proposed to repeal section 30A of the ITA which means that affordable housing relief will no longer be available to individuals who pay AHL. Noting that the proposed repeal of the affordable housing relief is being undertaken less than two months after the provisions were introduced in the law, this creates unpredictability in the tax regime, which makes it difficult for businesses and employees to make long term plans.

b) Deductibility of AHL as an Allowable Expense

Allowable Business Expense: The AHA introduced a provision in the ITA allowing persons carrying on business to deduct AHL as a deductible expense for purposes of ascertaining their income for tax purposes. The Bill seeks to clarify that such expenditure shall now be deductible by all other persons who earn income other than employment income.

Allowable Employment Expense: The Bill has proposed to introduce a new provision allowing the AHL amount deducted and remitted by an employer from an employee's gross salary as an allowable deduction on an employee's income. The provision is aimed at replacing the affordable housing relief that is proposed to be deleted.

c) Scrapping of Rebates Granted to Developers of Residential Housing

The Bill has proposed to delete the 15% income tax rebate available to companies constructing at least one hundred residential units annually, which had been introduced effective 1 January 2017 to encourage developers to develop affordable housing under the previous government's Big Four Agenda that also prioritised affordable housing as one of its critical pillars. While the proposed scrapping of the preferential tax rate of 15% is in line with the MTRS which proposed to phase out the preferential corporate tax rates in the FY 2024/25, it may have been prudent for government to retain this preferential tax rate for developers in the short-term until the housing gap has been sufficiently closed in line with the affordable housing agenda.

d) Other Housing-Related Proposed Amendments

The Bill has proposed to increase the amount allowable as a deductible expense, with respect to interest paid to financial institutions defined in the ITA such as banks, insurance companies, building societies, the National Housing Corporation, a co-operative society etc., from KES 300,000 to KES 360,000 per year. The interest amount will now be a deductible expense up to KES 360,000 per year for money borrowed and applied to the purchase or improvement of residential premises.

By way of clean up and transitioning to the affordable housing program, the Bill has proposed to delete the tax exemption on the income of the National Housing Development Fund (NHDF) and the exemption on the amount withdrawn from the NHDF to purchase a house by a first-time homeowner contributor, both of which are currently tax-exempt.

C. Amendments Relating to Investments

a) *Repeal of Investment Deduction Allowance for Bulk Storage Facilities for the SGR*

Proposed Effective Date: 1 July 2024

The Bill proposes to repeal the provisions of the ITA which grant an investment deduction of 150% of the capital expenditure incurred on the construction of bulk storage and handling facilities of a minimum storage capacity of 100,000 metric tonnes for supporting the SGR operations.

This provision was introduced in 2020 with an expiry date of 31 December 2021, which was extended for 3 years to 31 December 2024. If the proposal is passed into law, capital expenditure of incurred on bulk storage and handling facilities for the SGR will no longer benefit from the accelerated investment deduction of 150%. The expenditure would however qualify for investment allowance as a commercial building at the rate of 10% per year in equal instalments.

b) Infrastructure Bonds No Longer Tax Free

Proposed Effective Date: 1 July 2024

Interest income from bonds, notes and similar securities used to raise funds for infrastructure and other social services are currently exempt from tax provided they have a maturity period of at least 3 years. The Bill proposes to limit the exemption to qualifying government securities which were issued before commencement of the proposed amendment (i.e., 1 July 2024). This therefore means that upon enactment of the Bill, interest income accruing from infrastructure bonds, notes and similar securities used to raise funds for infrastructure and other social services will be subject to tax at the rate of 5%.

While infrastructure bonds have been very attractive to investors due to their tax-free status, if this provision is enacted, it may reduce investor appetite for these government securities, as the tax will reduce the effective yield of the investment. We however note that the proposed WHT rate on interest is lower compared to the ordinary rate of 15% applicable on other forms of interest.

c) *Lower Capital Gains Tax Rate for Investments Certified by the Nairobi International Financial Centre Authority*

Proposed Effective Date: 1 January 2025

Currently, where a firm has invested KES 5 billion, holds the investments for at least five years and is certified by the Nairobi International Financial Centre Authority (NIFC Authority), any transfer of such investment would be subject to capital gains tax (CGT) at the rate that was prevailing at the time that the investment was made. This provision was introduced by the Finance Act 2022 and was effective from 1 January 2023. The effect of this provision was to shield qualifying investors from future changes in the rate of CGT upon disposal.

Since the Bill proposes to delete the above provision, the Bill also proposes to re-introduce the provision by setting out a preferential CGT rate of 5% for entities certified by the NIFC Authority, that invest at least KES 3 billion and hold their investments for at least 5 years.

If the proposed change is passed into law, any transfer of investment which is certified as being more than KES 3 billion and has been held for at least 5 years will be subject to CGT at the rate of 5%. The proposal is a welcome move as it would cushion investments made after 1 January 2023 from the current CGT rate of 15%.

d) *CGT Exemption on Transfer of Property to a Company Held by an Individual*

Proposed Effective Date: 1 July 2024

The Bill proposes to amend the Eighth Schedule to the ITA to introduce a CGT exemption on transfer of assets to a company where an individual holds 100% shareholding. Currently, transfer of assets to a company would be exempt from CGT where 100% of the shareholding of the company is held by spouses or a spouse and their child/children. The proposed amendment is a welcome move as it will enable individuals who wish to hold their assets through a company to do so without CGT impact.

D. Changes in the Employment Tax Regime

a) *Adjustment of Prescribed Amounts for Tax Purposes*

Proposed Effective Date: 1 July 2024

The Bill has proposed various changes in relation to the taxation of amounts paid to employees which would ordinarily be deemed to be employment income subject to income tax. The Bill is seeking to increase the threshold of certain amounts in line with the changes in inflation noting that the thresholds have not been adjusted for many years. The proposed amendments are as follows:

- **Per diems:** Currently, the threshold for the amount deemed as a reimbursement to an employee for purposes of subsistence, travelling, entertainment and other allowances (per diems) is KES 2,000 per day which is excluded from the computation of employment income of that person for tax purposes. The Bill proposes to amend this threshold from KES 2,000 to an amount not exceeding 5% of the employee's gross monthly income, subject to the employer having in place a policy on the payment and accounting for these expenses.

- **Miscellaneous benefits:** The current provisions state that any benefit, advantage, or facility of whatsoever nature the aggregate value of which is more than KES 36,000 in a year shall be deemed to be employment income subject to income tax. The Bill proposes to increase this threshold from KES 36,000 to KES 48,000.

- **Meal benefits:** Currently, meals provided to employees by employers where the value of the meal is KES 48,000 and below per year per employee is not a taxable benefit. The Bill proposes to increase the taxable threshold of the value of meals offered to employees by an employer from KES 48,000 to KES 60,000.

The above proposals are a welcome move as they will align the prescribed amounts with the changing economic times.

a) Health Insurance Contributions to be Allowable for Tax Purposes

Proposed Effective Date: 1 July 2024

The Bill proposes that contributions made to the recently introduced Social Health Insurance Fund (SHIF) be treated as allowable deductions when computing the tax chargeable for a year of income of the payer. As a clean-up, the Bill proposes to subsequently delete the provision on relief granted to employees in relation to contributions made to the National Hospital Insurance Fund (NHIF) which is being phased out and replaced by SHIF.

b) Amendments relating to Retirement Benefits

Proposed Effective Date: 1 July 2024

- **Removal of Post-Retirement Medical Fund Relief**
  The ITA currently provides that every resident individual who contributes to a post-retirement medical fund is eligible for a relief at the rate of 15% of the annual contribution paid in that year of income up to a maximum of KES 60,00 per annum.

  The Bill has proposed to delete the rate of 15% and the cap of KES 60,000 per annum and proposes to introduce a new provision allowing contributions made to a post-retirement medical fund be deemed as an allowable deduction for purposes of computing taxable income capped at KES 10,000 per month. In effect, the allowable deduction has been increased from KES 60,000 to KES 120,000 per annum.

- **Increased Deductibility Thresholds for Pension and Provident Contributions**
  Currently, gratuity or similar payments made by an employer into a registered pension, provident or individual retirement fund are deductible expenses provided they do not exceed KES 240,000 for a full year of service and KES 20,000 per month for a part year of service. The Bill proposes to increase this threshold to KES 360,000 for a full year of service and KES 30,000 per month for a part year of service.

- **Changes to the Tax Exemptions Applicable to Pension Benefits**
  Currently, monthly pension payments granted to a person who is 65 years or older are exempt from tax. In line with the MTRS, the Bill proposes to expand the tax exemption to

also apply to payment of pension benefits to individuals who have retired prior to the age of retirement due to ill health and withdrawals from the fund after the lapse of 20 years from the date the person registered with the fund.

The proposed amendment is a welcome move as it is enables Kenyans to freely access their pension benefits without having to wait until the age of 65 years to benefit from the tax exemption.

E. Other Proposals

a) Reimbursement of Expenses Incurred by Public Officers

The Bill has proposed to introduce a new provision for the reimbursement of expenditure incurred by a public officer in the performance of their official duties, notwithstanding the ownership or control of any assets purchased. Notably, this provision has been limited to public officers, and may be interpreted to allow personal ownership of assets which would ordinarily amount to a taxable benefit as the assets would not be owned by the employer, however in this case the provision has been included as an expenditure not deemed as a gain or profit and therefore it would not be a taxable benefit.

The provision as drafted may encourage misuse of public resources, as it is open for interpretation and unclear on the nature of assets which can be purchased and owned or controlled by the public officer, the cost of which would be allowed to be claimed as a reimbursement.

b) Repeal of Withholding Tax Thresholds

Proposed Effective Date: 1 July 2024

The Bill proposes to delete the WHT threshold of KES 24,000 applicable on payments to resident persons. This means that WHT will now apply to all payments to resident persons in respect of management, professional, training, or contractual services irrespective of the amount.

c) Deletion of Various Exemptions Available to Trusts

Proposed Effective Date: 1 July 2024

The Bill proposes to repeal various exemptions applicable to trusts which were introduced by the Finance Act, 2021, barely three years ago, which include:

i. exemption on the income of any registered trust scheme;
ii. exemption relating to the income or principal sum of a registered family trust; and
iii. exemption from CGT arising from transfer of immovable property to a family trust.

The proposed repeal would have an impact on trust structures which relied on these tax exemptions and such structures may need to be reviewed to ensure that they are viable on a going forward basis.

2. PROPOSED AMENDMENTS TO THE VALUE ADDED TAX ACT

The Bill proposes to make various changes to the Value Added Tax Act, 2013 (the VAT Act) with the aim of increasing revenue collection by introducing VAT on various goods and services which were previously exempt or zero rated for VAT. Key changes include a proposal to exempt a transfer of business as a going concern from VAT, the introduction of VAT on betting, gaming and lottery services as well as certain financial transactions, and proposed changes relating to claiming of VAT refunds. A detailed analysis of the proposed changes to the VAT Act is set out below:

Proposed Effective Date: 1 July 2024

a) Proposed Increase in the Threshold for VAT Registration

The Bill proposes to increase the threshold for VAT registration from KES 5 million to KES 8 million. This will mean that businesses with a turnover of less than KES 8 million in a twelve-month period will no longer be required to register for VAT.

The proposed amendment is aimed at reducing the cost and administrative burden of ensuring compliance by small taxpayers whose revenue may not be commensurate to the resources expended by the KRA. Notably, these businesses will still be required to issue eTIMS compliant invoices for their supplies to be tax deductible for corporate income tax purposes.

b) Proposed Limitation on VAT Refunds and VAT Credit

The Bill proposes to amend section 17 of the VAT Act by deleting some instances when refunds of excess input VAT can be made. The proposed amendment will mean that there will be no refunds in instances where a taxpayer's excess input VAT relates to withholding VAT or where the input VAT arises from supplies made to official aid funded project approved by the Cabinet Secretary. If the proposed amendments are enacted, excess input VAT arising from these circumstances will no longer be claimed as a refund but can be carried forward to the subsequent tax periods.

The Bill also proposes the deletion of provisions which permit a registered person who makes both taxable and non-taxable supplies to claim 100% input VAT where the value of taxable supplies exceeds 90% of the total supplies and disallows input VAT in entirety where the value of taxable supplies is less than 10% of the total supplies. The proposed deletion means that registered persons making taxable and non-taxable supplies will only claim VAT on the input VAT relating to taxable supplies.

c) Transfer of Business as a Going Concern Proposed to be Exempt from VAT

The Bill proposes to exempt from VAT the Transfer of Business as a Going Concern (TOGC). TOGCs are currently subject to VAT at the standard rate of 16%. Prior to 1 July 2018, a TOGC was zero-rated for VAT purposes. Pursuant to the Tax Laws (Amendment) Act, 2018, effective 1 July 2018, a TOGC was categorised as an exempt supply. However, pursuant to the Tax Laws (Amendment) Act, 2020, effective 25 April 2020, the VAT exemption was deleted and a TOGC became a taxable supply.

The proposed re-introduction of the VAT exemption on a TOGC is a welcome move as it will provide the flexibility for internal restructurings for business and operational efficiency and make it easier to structure mergers and acquisitions transactions. For a transfer to qualify as a TOGC, certain key elements need to be fulfilled, for example, the transfer should relate to a business and the business should be a going concern prior to the transfer. An analysis would need to be undertaken on a case-by-case basis to assess whether a transaction qualifies as a TOGC.

d) Changes to the First and Second Schedules to the VAT Act

The Bill proposes to amend the First Schedule (relating to exempt supplies) and the Second Schedule (relating to zero-rated supplies) to the VAT Act by deleting some supplies from the First Schedule (making them taxable) and by also moving some supplies from the Second Schedule to the First Schedule (making them exempt from zero-rated therefore more costly as the input VAT incurred is not recoverable). The proposed amendments will impact various industries such as the local film industry, the tourism industry, the financial sector, manufacturers and the agricultural industry.

We have analysed the proposed amendments per sector below:

Aviation Sector			
Details	Current Rate	Proposed Rate	Comments
Aeroplanes and other aircrafts on unladen weight exceeding 2,000 kgs but not exceeding 15,000 kgs of tariff number 8802.30.00	Exempt	16%	*In our view, these proposals are likely to result in an increase in costs in the aviation sector, especially for persons involved in the hiring of aircrafts, to cater for the introduction of VAT.*
Spacecraft (including satellites) and suborbital and spacecraft launch vehicles of tariff number 8802.60.00	Exempt	16%	
Hiring, leasing and chartering of aircrafts excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00	Exempt	16%	
Direction-finding compasses, instruments and appliances for aircraft	Exempt	16%	
Deletion of VAT exemption of 'all goods and parts thereof of chapter 88' and replacing it with 'Aircraft parts of chapter 88'	Exempt	Only aircraft parts will be exempt	

Agriculture & Food Sector			
Details	Current Rate	Proposed Rate	Comments
Tea packaging material	16%	Exempt	*The shift of these goods and services from standard rated to exempt may signify a commitment by the Government to promoting food security and enhancing agricultural productivity by facilitating access to vital inputs for agribusinesses.*
Micronutrients, foliar feeds and bio stimulants of Chapter 38	16%	Exempt	
The supply of ordinary bread	0%	Exempt	*The shift of these goods and services from zero rated to exempt will impact the production costs and consequently the final costs of these items as the suppliers will no longer be in a position to claim input VAT on the supplies and may opt to pass on the irrecoverable VAT costs to the consumers.*
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 Agriculture	0%	Exempt	
Agricultural pest control products	0%	Exempt	
The supply of gluten bread and unleavened bread	Exempt	16%	*The standard rating of these goods and services will likely result in an increase in the cost of sugarcane, gluten bread and unleavened bread.*
Transportation of sugarcane from farms to milling factories	0%	16%	

Tourism Sector			
Details	Current Rate	Proposed Rate	Comments
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 for Tourism	Exempt	16%	*In our view, the removal of the VAT exemptions in the tourism sector is likely to dampen investment prospects in the sector, despite tourism's substantial contribution to the country's GDP.*
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	Exempt	16%	

Healthcare Sector			
Details	Current Rate	Proposed Rate	Comments
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 for Health	Exempt	16%	*The exemption on taxable goods for the construction and equipping of specialized hospitals was introduced by the Finance Act, 2023, however, the Act did not provide a definition for a 'specialized hospital' which resulted in confusion as to the entities which qualify for the exemption. Further, the Health Cabinet Secretary did not issue guidelines to provide guidance on the same. Therefore, it seems that the provisions will be repealed without having achieved the intended impact on the healthcare sector.*
Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon recommendation by the Cabinet Secretary for Health	Exempt	16%	

E-Mobility Sector			
Details	Current Rate	Proposed Rate	Comments
The supply of electric bicycles	0%	16%	*The zero-rating of these e-mobility related supplies was introduced by the Finance Act, 2023 in an effort to encourage the use of renewable energy within the transportation sector. The removal of this incentive could result in reduced growth within the e-mobility sector and goes against the government's green agenda, or the government's commitment to provide tax stability and not reverse laws on a yearly basis.*
The supply of electric buses of tariff heading 87.02	0%	16%	
The supply of motorcycles of tariff heading 8711.60.00	0%	Exempt	

Renewable Energy Sector			
Details	Current Rate	Proposed Rate	Comments
Specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters and deep cycle batteries that use or store solar power, until the completion of the projects under construction upon recommendation to the Commissioner by the Cabinet Secretary for Energy	Exempt	Exempt until the completion of the projects under construction	*The Bill proposes to restrict the VAT exemption on the supply of specialized equipment for the development and generation of solar and wind energy by limiting such supply to the completion of the solar or wind project that is under development.* *This may hinder the ability for developers to access essential equipment during crucial stages of project implementation, which in turn undermines the transition to sustainable energy sources.*
The supply of solar and lithium-ion batteries	16%	0%	

Manufacturing Sector			
Details	Current Rate	Proposed Rate	Comments
Plant, machinery and equipment used in the construction of a plastics recycling plant.	Exempt	16%	*The proposal to repeal the exemption granted to investors in manufacturing projects may dampen investment prospects in the manufacturing sector. The*
Capital goods for promotion of investments in the manufacturing sector	Exempt	16%	

The supply of locally assembled and manufactured mobile phones	0%	16%	*clarification of what constitutes an original equipment manufacturer appears to signify the Government's commitment to promoting the growth of local manufacturing.*
Introduction of 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' in relation to locally manufactured passenger vehicles	Exempt	Only supplies from original equipment manufacturers used in the local manufacture of passenger vehicles will be exempt.	
Financial Services			
Details	Current Rate	Proposed Rate	Comments
Certain financial services including: a. Issuance of debit cards; b. telegraphic money transfer services; c. foreign exchange transactions, including the supply of foreign drafts and international money orders; d. cheque handling, processing, clearing and settlement, including special clearance or cancellation of cheques; e. issuance of securities for money, including bills of exchange, promissory notes, money and postal orders; f. the assignment of a debt for consideration; and g. the provision of the VAT-exempt financial services on behalf of another on a commission basis.	Exempt	16%	*The proposal to introduce VAT on financial services will make these services more expensive and could negatively impact the growth of the banking and insurance sectors.*
Insurance and Re-insurance premium.	Exempt	Ancillary services to insurance will be vatable at 16%	

Others			
Details	Current Rate	Proposed Rate	Comments
Taxable goods supplied to persons that had an agreement or contract with the Government prior to 25 April 2020 and the agreement or contract provided for exemption from VAT. However, this provision was only applicable: a. to the unexpired period of the contract or agreement; and b. upon recommendation by the Cabinet Secretary responsible for matters relating to energy.	Exempt	16%	*This is likely a clean-up of the VAT Act as these projects have most likely been concluded. However, where there are ongoing projects covered under this provision, the proposal will negatively impact these projects and will have negative implications on future projects as investor confidence in the Government will be dampened.*
Inbound international sea freight offered by a registered person	0%	16%	*The proposal will see the cost of inbound international sea freight increase and consequently the cost of the imported goods.*
Betting, gaming and lotteries services	Exempt	16%	*The introduction of VAT on these services will significantly increase costs for players in a sector that is already heavily taxed. Further, the VAT Act does not provide guidance on what the taxable value of the services will be.*
Services imported or procured locally for use by the local film producers or local film agents certified upon recommendation by the Kenya Film Commission, subject to approval by the Cabinet Secretary for the National Treasury	Exempt	16%	*The proposal to subject all goods and services imported for the local film industry will negatively impact the local film sector and goes against the governments agenda to create opportunities for the youth.*
Goods imported or purchased locally for use by the local film producers and local filming agents, upon recommendation by the Kenya Film Commission, subject to approval by the Cabinet Secretary to the National Treasury	Exempt	16%	

All goods including material supplies, equipment, machinery and motor vehicles, for official use by the National Intelligence Service. This is in addition with such goods for official use by the Kenya Defence Forces and the National Police Service	16%	Exempt	*The supply of goods to the National Intelligence Service will be exempt from VAT.*
Pressure sensitive adhesive of tariff number 3506.91.00	Exempt	16%	*The introduction of VAT on these goods which are mainly used in manufacture will see the costs of the affected final products increase.*
Plain polythene film/LPDE of tariff number 3921.19.10	Exempt	16%	
Plain polythene film/PE of tariff number 3921.19.10	Exempt	16%	
PE white 25-40gsm/release paper of tariff number 4811.49.00	Exempt	16%	
ADL 25-40gsm of tariff number 5603.11.00	Exempt	16%	
Musical instruments and other musical equipment imported or purchased locally, for exclusive use by educational institutions, upon recommendation by the Cabinet Secretary for Education	Exempt	16%	*This will impact educational institutions which offer music classes as the introduction of VAT will increase the tutoring costs.*
Inputs and raw materials used in the manufacture of mosquito repellent on recommendation by the Cabinet Secretary responsible for Health	16%	Exempt	*This is a welcome move in the fight against malaria as it will reduce the cost of production of mosquito repellents.*
Bioethanol vapor (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel)	0%	Exempt	*The importers of these stoves will be impacted as they will not be in a position to claim the input VAT on the importation of these stoves.*

3. PROPOSED AMENDMENTS TO THE EXCISE DUTY ACT

Proposed Effective Date: 1 July 2024

a) Goods to be Classified by Reference to Tariff (HS) Codes

The Bill proposes to introduce a new provision to the effect that goods in the Excise Duty Act, 2015 (the EDA) shall be classified by reference to tariff codes set out under Annex 1 to the Protocol on the Establishment of the

East African Community (EAC) Customs Union.

Annex 1 to the Protocol on the Establishment of the EAC Customs Union sets out Harmonised Commodity Description and Coding System (EAC CET HS Codes) applicable for purposes of tariff classification of goods. The EAC CET HS Codes are internationally recognised and widely used in international trade and their integration under the EDA ensures that there is consistency and uniformity in classification of goods locally / domestically in line with international trade. Additionally, use of the EAC CET HS Codes will enhance transparency in determining applicability of excise duty on various goods as well as accurately determining the applicable excise duty rates for different excisable goods.

b) Imposition of Excise Duty on Services Offered Through a Digital Platform

The Bill proposes to impose excise duty on excisable services offered in Kenya by a non-resident through a digital platform. Additionally, the Bill proposes that the excise duty in respect of excisable services offered in Kenya by a non-resident through a digital platform shall be payable by the non-resident person offering the service. This proposal is aimed at increasing the tax base for excise duty on excisable services provided in Kenya. The proposal is also aimed at levelling the playing field with the resident service providers providing excisable services through digital platforms who are currently subject to excise duty and thus will promote fairness in taxation.

c) Introduction of Remission of Excise Duty on Spirits

The Bill proposes to add spirits made from sorghum, millet or cassava or any other agricultural products (excluding barley) grown in Kenya as one of the products that the Cabinet Secretary may grant remission of excise duty, wholly or partially. Previously, only beer and wine made from sorghum, millet or cassava was eligible for excise duty remission.

In our view, the addition of spirits made from agricultural products (excluding barley) as one of the products that shall be subject to excise duty remission is aimed at curbing consumption of illicit spirits which pose significant health concerns. Additionally, this shall also stimulate growth in the agricultural sector and support local farmers who grow sorghum, millet or such other agricultural products used for manufacturing spirits, beers and wines.

d) Repeal of Relief Provisions for Excise Duty Paid on Purchase of Raw Materials on Internet Data Services for Re-sale

The Bill proposes to repeal section 14 of the EDA, which allows for the offsetting of excise duty paid in respect of excisable goods imported or manufactured in Kenya by licensed manufacturers which have been used as raw materials for manufacturer of other excisable goods. Relief which the Bill proposes to repeal is also currently available for excise duty paid in respect of internet data services by a licensed person who purchases data on bulk for resale against the excise duty payable by that person on internet data services supplied to the final consumer.

Should the Bill be enacted as drafted, it is our view that that these amendments will increase the cost of manufactured excisable goods (whose raw materials are subject to excise duty). On the same note, bulk purchasers of the internet data for resale are likely to pass this additional cost to the final consumers, increasing the cost of internet data.

e) Introduction of Timelines for Issuance of Excise Duty Licenses

The Bill proposes to introduce a specific statutory timeline of fourteen days of receipt of all required valid documents for the Commissioner to consider and make a decision on applications for issuance of excise duty license. This is a welcome move aimed at expediting the licensing process and will ensure that applicants receive timely responses to applications for excise duty registration.

f) Extended Timelines for Payment of Excise Duty by Licensed Manufacturers of Alcoholic Beverages

The Bill proposes an amendment to the EDA extending the timelines for remitting excise duty to the Commissioner by manufacturers of alcoholic beverages from twenty-four hours upon the removal of the goods from the stockroom to five working days upon the removal of goods from the stockroom.

This proposal is welcome as it shall allow taxpayers ample compliance time to remit excise duty to the Commissioner. Further, this amendment will ease the cashflow constraints currently experienced by manufacturers of alcoholic beverages who are required to remit excise duty payments within twenty four hours of removal of goods from the stockroom as the manufacturers would not have received payment from purchasers.

g) Increased Rates on Various Excisable Goods

The Bill proposes to increase the excise duty rates applicable in respect of the following goods set out under the First Schedule to the EDA. The proposed increase in the excise duty rates is aimed at enhancing revenue collection. That said, consumers will have to shoulder higher prices for the following goods:

Product	Current Excise Duty Rate	Proposed Excise Duty Rate
Motorcycles of tariff 87.11 (Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars) other than motorcycle ambulances, locally assembled motorcycles and electric motorcycles	KES 11,608.23 per unit	Motorcycles of tariff 87.11.60.00 (with electric motor for propulsion) other than motorcycle ambulances and locally assembled motorcycles will be subject to excise duty at a rate of 10% of the value or KES 12,952.83 per unit whichever is higher. T*he upshot of this proposal is to charge excise duty on electric motorcycles of HS Code 87.11.60.00 only and remove excise duty on all other motorcycles covered under tariff heading 87.11. This amendment in our view will make electric*

		motorcycles more expensive and will discourage the uptake in electric motorcycles.
Imported sugar confectionary of tariff heading 17.04 (Sugar confectionery (including white chocolate), not containing cocoa)	KES 40.37 per kg	KES 257.55 per kg
Cigarettes with filters (Hinge lid and soft cap)	KES 3,825.99 per mille	KES 4,100 per mille
Cigarettes without filters (plain cigarettes)	KES 2,752.97 per mille	KES 4,100 per mille
Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essence	KES 1,500 per kg	KES 2,000 per kg
Liquid nicotine for electronic cigarettes	KES 70 per millilitre	KES 100 per millilitre

h) *Increase in excise duty on internet, telephone and mobile money transfer fees*

The Bill proposes to increase excise duty rates on excisable services such as telephone calls, internet usage, and money transfer services provided by banks and cellular phone service providers as set out below.

Product	Current Excise Duty Rate	Proposed Excise Duty Rate
Telephone and internet data services.	15%	20%
Fees charged for money transfer services by banks, money transfer agencies and other financial service providers	15%	20%
Fees charged for money transfer services by cellular phone service providers and payment service providers licensed under the National Payment System Act, 2011.	15%	20%

This change will directly impact the costs associated with telephone and internet services, as well as the fees for money transfer services. Considering the crucial roles that internet data, telephone services, and mobile money transfers play in business operations, this proposed amendment is expected to have an adverse impact on the overall cost of doing business in Kenya. Importantly, this change will significantly impact small business enterprises which rely heavily on phone-based transactions and communications, potentially leading to increased operational expenses and financial challenges.

i) Uplift of Excise Duty in the Betting and Gaming Industry

The Bill proposes an increase in the rate of excise duty on

i. betting and gaming from 12.5% to 20% of the amount staked or wagered;
ii. prize competitions from 12.5 % to 20% of the amount paid or charged to participate in a prize competition; and
iii. lotteries (excluding charitable lotteries) from 12.5 % to 20% of the amount paid or charged to buy the lottery ticket.

Notably, this increase follows a previous increase effected by the Finance Act 2023 on the above items from 7.5% to 12.5%. The impact of these proposed amendments is expected to be profound, particularly on the betting and gaming industry.

Should the Bill pass as proposed, businesses in these sectors may experience increased operational costs, reduced consumer participation due to higher fees, and potential shifts in market dynamics as players adapt to the new taxation regime.

j) Introduction of the Excise Duty on Internet and Social Media Advertisements in respect of Alcoholic Beverages and the Betting and Gaming Industry

The Bill proposes a 15% excise duty on advertisements related to alcoholic beverages, betting, gaming, lotteries and prize competitions when conducted on the internet and social media platforms.

Previously, excise duty on adverts concerning alcoholic beverages, betting, gaming, lotteries and prize competitions was only applicable where the advertisement was carried out on the television, print media, billboards and radio stations.

The proposed amendment is aimed at expanding the tax base for excise duty on such advertisements, reflecting the evolving landscape of advertising media and ensuring consistency in taxation across various platforms.

k) Repeal of Annual Inflation Adjustment for Excisable Goods

The Bill proposes to delete the provision that provides for annual inflationary adjustments for excisable goods set out under the First Schedule to the EDA.

Notably, this amendment is a clean-up exercise following the amendments vide the Finance Act, 2023 which revoked the Kenya Revenue Authority's powers to enact inflation adjustments. However, we take note that under the EDA, the Cabinet Secretary for Finance still retains the ability to modify excise duty rates of excisable goods or services by an amount not exceeding 10% of the rates stated in the First Schedule to the EDA.

l) Changes to the Excise Duty Regime for Alcoholic Products

The Bill proposes a change in the method of levying excise duty rates for certain alcoholic products as listed below. The Bill proposes transitioning from a "per litre" basis to a "centilitre basis" for calculating excise duty.

This shift addresses the complexity of alcoholic products, which contain various components in addition to pure alcohol. By levying excise duty on a centilitre basis, the calculation of excise duty will be more precise, ensuring that the duty is imposed specifically on the alcohol content rather than the overall composition of the beverage. Importantly, this shift will allow for fairness and equity in the taxation of alcoholic beverages, given that higher amounts of taxes will be imposed on beverages with higher contents of alcohol which aligns with international best practices on taxation of alcoholic beverages.

Businesses operating in the alcoholic beverage industry should carefully review and adjust their pricing strategies, tax calculations, and compliance procedures in response to these amendments. This proactive approach is crucial for maintaining regulatory compliance and ensuring long-term financial viability.

Product	Previous Excise Duty Rate	Proposed Excise Duty Rate
Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%	KES 134 per litre	KES 22.5 per centilitre of pure alcohol
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%	KES 335.30 per litre	KES 16 per centilitre of pure alcohol
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	KES 229 per litre	KES 22.5 per centilitre of pure alcohol

m) Clinker Excluded from Excise Duty

The Bill proposes to exclude clinker from of excise duty. Clinker is essential in the manufacture of cement, serving as the primary raw material. Excluding clinker from excise duty will reduce production costs for local cement manufacturers in Kenya who import clinker. Notably is that majority of local cement manufacturers import clinker and thus imposing excise duty on clinkers had a negative impact on majority of local cement manufacturers as they were rendered uncompetitive.

n) Excluding Certain Items Originating from East African Community (EAC) Partner States from Excise Duty

The Bill proposes to exclude various items sourced from an EAC Partner State from excise duty, as set out below:

i. imported cartons, boxes and cases, of corrugated paper or paperboard, folding cartons, skillets labels of paper and paperboards;
ii. imported eggs;
iii. imported onions; and
iv. imported potatoes, potato crisps and potato chips

This is a welcome change given that it promotes intra-regional trade within the EAC community.

o) National Intelligence Service Exempted from Excise Duty on Excisable Goods

The Bill proposes to exempt from excise duty, all goods including; materials supplies, equipment, machinery and motor vehicles purchased for official use by the National intelligence Service. Previously, this exemption only extended to the Kenya Defence Forces and the National Police Service.

In our view, this is a welcome move aimed at promoting parity with other security agencies such as Kenya Defence Forces and Kenya Police who are already enjoying similar exemptions.

p) Introduction of a Definition of "original equipment manufacturer"

The EDA provides an exemption from excise duty for locally manufactured passenger motor vehicles. The EDA defines the term "locally manufactured passenger cars" as motor vehicles designed for passenger transportation made in Kenya and containing at least 30% local content. The term "local content" is defined to mean parts that are designed and manufactured in Kenya by an "original equipment manufacturer" operating within the country.

There has been uncertainty as to what the term "original equipment manufacturer" means and it is on this basis that the Bill proposes to define an 'original equipment manufacturer' to mean a manufacturer of parts and sub-assemblies who owns the intellectual property rights in the parts or sub-assemblies. This definition is a welcome move as it brings clarity to the definition of 'Locally manufactured passenger motor vehicles' which are exempt from excise duty.

q) Introduction of Excise Duty on Coal

The Bill proposes to introduce excise duty on coal at a rate of the 5% of the value or KES 27,000 per metric tonne whichever is higher. This proposed amendment appears to be in line with the government's policy objectives to reduce greenhouse gas emissions and air pollution which contributes to adverse climate change and health concerns. This is on the basis that coal combustion is a significant source of greenhouse emission of gases and thus imposing tax on coal may lead to adoption of clean energy, and ultimately increase tax revenues.

r) Introduction of Excise Duty on Vegetable Oil

The Bill proposes to introduce excise duty at a rate of 25% on the following vegetable oils:

a. Palm oil and its fractions, whether or not refined, but not chemically modified;

b. Sunflower-seed, safflower or cotton-seed oil and fractions thereof, whether or not refined, but not chemically modified;

c. Other fixed vegetable or microbial fats and oils (including jojoba oil) and their fractions, whether or not refined, but not chemically modified; and

d. Margarine; edible mixtures or preparations of animal, vegetable or microbial fats or oils or of fractions of different fats or oils of Chapter 15 of the EAC CET HS Codes (Animal, vegetable or microbial fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes), other than edible fats and oils or their fractions of heading 15.16 of the EAC CET HS Codes (Animal, vegetable or microbial fats and oils and their fractions, partly or wholly hydrogenated, inter-esterified, re-esterified or elaidinised, whether or not refined, but not further prepared).

The introduction of excise duty is likely instigated by the need to raise additional revenue. Consumers of the above vegetable oils will have to bear higher prices for the vegetable oils.

s) Introduction of Excise Duty on Certain Plastics

The Bill proposes to introduce excise duty on all articles of plastic under tariff heading 3923.30.00 (Carboys, bottles, flasks and similar articles) and 3923.90.90 (other articles of plastic for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics) Currently, excise duty is only charged on these articles of plastic when imported.

4. AMENDMENTS TO THE TAX PROCEDURES ACT

Effective date of all amendments: 1 July 2024

a) Requirements in the Licensing of Tax Agents

The Bill proposes to amend the Tax Procedures Act (the TPA) in respect of applications for tax agents licenses to specify that in addition to the applicant making the application in the prescribed form, they shall need also to be recommended by the Tax Agents Committee established under the Tax Procedures Act (Tax Agents) Regulations, 2019. Additionally, the Tax Agents Committee appointed under the Tax Procedures Act (Tax Agents) Regulations, 2019 shall be required to give recommendations to the Commissioner for cancellation of tax agents licenses.

The TPA currently requires the Tax Agents Committee to issue a recommendation for licensing of tax agents, however, the provision does not specify which Tax Agents Committee, therefore this is a clean-up exercise to provide clarity that the Tax Agents Committee required to issue recommendation for licensing is the one established under the Tax Procedures Act (Tax Agents) Regulations, 2019. With respect to cancellation of the tax agents' licenses, there was no provision requiring the Tax Agents Committee to give recommendations. This is a new provision which in our view is aimed at adding another layer of checks and balances in the process of cancellation of licenses.

b) ***Requirements for an Electronic Tax Invoice***

The Bill proposes that any valid electronic tax invoice issued shall contain; words “TAX INVOICE”, the name, address and PIN of the supplier, the serial number of the tax invoice, the date and time of issuing the tax invoice, the date and time of issuing the tax invoice, the description of the supply which includes the quantity of the goods and the type of services, details of any discount allowed at the time of the supply the consideration for the supply, the tax rate charged and the total tax amount of tax charged; and any other prescribed information.

It is worth noting that the recently gazetted Tax Procedures (Electronic Tax Invoice) Regulations, 2024 sets out a similar requirement on the contents of a valid electronic tax invoices. Therefore, the inclusion of the contents of a valid tax invoice in the main statute (the TPA) is crucial on the basis that the TPA is main procedural statute for tax matters in Kenya and therefore any subsidiary legislation should be in line with the provisions of the main statute.

c) ***Introduction of Tax Abandonment Provisions***

The Bill proposes the introduction of tax abandonment provisions whereby the Commissioner with the prior approval of the Cabinet Secretary may refrain from assessing or recovering any tax debts due. The circumstances under which the Commissioner may abandon or deem such tax as extinguished are where the Commissioner is satisfied that;

a. it may be impossible to recover tax;
b. there is undue difficulty or expense in the recovery of unpaid tax;
c. there is hardship or inequity in relation to recovery of unpaid tax; or
d. there is any other reason occasioning inability to recover the unpaid tax.

For context, it is worth noting that this proposal revives the previous tax abandonment measures in force prior to July 2023. In our view introduction of tax abandonment provisions is a welcome move to taxpayers who are struggling financially as the provisions provide a mechanism for taxpayers who are genuinely unable to pay their taxes to be relieved of the tax burden. This proposal may also lead to efficiency in tax collections as the Commissioner's collection resources will be focused on taxpayers who can pay their tax debts. It would however have been imperative if the Bill had for good measure introduced grand-fathering provisions for the taxpayers who were disproportionately affected by the repeal of the tax abandonment provisions.

d) ***Agency Notices Valid for a Year where Agent is Unable to Pay the Due Amount***

The Bill introduces a validity period of one year for agency notices issued where the agent is unable to pay the amount due. Currently, an agent is required to pay the amount specified in the notice by the date specified in the notice, in the event that the agent is unable to pay the amount due to lack of funds, they are required to notify the Commissioner pursuant to which the Commissioner may either cancel or amend the agency notice or reject the notification by the agent.

In our view, this proposal is aimed at promoting collection of taxes by extending the timelines with which an agent should satisfy an agency notice issued to them. However, it is our view that placing an agency notice for a period of one year may have negative implications on taxpayers already labouring under financial distress thus creating undue cash flow problems for such taxpayers, which is contrary to the government efforts of reducing the costs of doing business in Kenya.

e) Obligations on Agency Notices to be Applicable to All Persons Issued with the Notice

The Bill proposes to amend the TPA by deleting the word 'taxpayer who without reasonable cause fails to comply with a notice' and substituting thereof with the words 'a person who without a reasonable cause fails to comply with a notice'. Notably, the term 'taxpayer' is defined under TPA as a person liable for tax under a tax law whether or not they have any accrued any tax liability in a tax period. On the other hand, a 'person' is defined under the TPA to include an individual, company, partnership, limited partnership, association of persons, trust, National Government, foreign government, political subdivision of the National Government or foreign government, or an international organisation.

In our view, this proposal is aimed at cleaning up and bringing clarity on who is liable in the event of non-compliance with the agency notice. The TPA as currently drafted places the liability for failure to comply with an agency notice on the taxpayer as opposed to the agent (e.g. bank and creditors) who has been issued with a notice.

f) Agency Notices May be Issued where a Notice of Appeal has been Lodged

The Bill proposes to delete the provision of the TPA which provides that the Commissioner cannot issue an agency notice unless the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court. This provision of the TPA providing that a Commissioner cannot issue an agency notice where the taxpayer has appealed was introduced through the Finance Act, 2023 and has been instrumental for taxpayers who have appealed against decisions of the Commissioner of the Tribunal as it has been operating as a stay of execution of such decisions.

Since its coming into force, the need to apply for a stay of execution before instituting an appeal was rendered unnecessary thereby ensuring a timeous and expediated resolution of appeals at the higher courts. Therefore, deleting this provision of the law will have a negative impact on taxpayers as it will lead to delay in resolution of matters, legal complexity and uncertainties for taxpayers who will have to navigate between both the court proceedings and actions required to comply with agency notices.

g) Scope of Withholding VAT Extended

The Bill proposes to delete the provisions of the TPA which currently exclude the application of withholding VAT on zero-rated supplies and registered manufacturers whose value of investments in the preceding 3 years from 1 July 2022 is at least KES 3 billion. This provision excluding the application of withholding VAT on zero-rated supplies and the aforementioned registered manufacturers came into force in 2016 and was mainly targeted at avoiding cash flow constraints that would likely arise if businesses that deal with zero-rated supplies and registered manufacturers were in perpetual VAT credit positions.

This proposed amendment would mean that businesses that supply zero-rated supplies will suffer 2% withholding VAT on their invoices in respect of zero-rated supplies and will consequently be in a perpetual tax credit position, thus creating artificial cash flow problems.

Additionally, the proposal would inflate the number of VAT refund applications made by taxpayers, creating an additional administrative burden on the KRA.

h) Clarification on Timelines for Applying for Refunds of Overpaid Taxes

Where a taxpayer has overpaid taxes and is seeking to offset the overpayment against outstanding or future tax debts or a refund of the overpaid tax, no timelines are currently provided for applying for the overpayment or the offset of the relevant taxes. The Bill has introduced a proposal which requires taxpayers to apply to the Commissioner for offsetting the overpaid tax against outstanding / future tax liabilities or for refund in respect of income tax within 5 years of the date of the overpayment. In the case of other taxes, the Bill proposes that taxpayers apply within 6 months of the date the tax was overpaid.

i) Objections to Tax Assessments to be Disallowed Automatically if Additional Information Requested is Not Provided

The Bill proposes to amend the TPA by providing that a notice of objection shall be deemed as automatically disallowed where a taxpayer fails to provide the additional information required by the Commissioner or fails to provide the information within the specified period in respect of a notice of objection. In our view, this provision means that taxpayers or their agents will have to be very vigilant to ensure that all the information requested for by the Commissioner that is necessary for lodging a valid notice of objection or supporting a notice of objection is provided within the stipulated timelines in order to avoid the notice of objection being rendered automatically disallowed.

j) Extended Timelines for Issuing Objection Decisions

The Bill proposes to increase the statutory period for issuing an objection decision from the current 60 days to 90 days from the date a valid notice of objection is received by the Commissioner. Notably, there is no corresponding increase in time given to taxpayers in lodging their notice of objection.

In our view, this proposal is aimed at allowing the Commissioner ample time to review documents and engage with the taxpayer before issuing their objection decisions owing to backlog and capacity constraints experienced by the Commissioner's team, and it is expected that this will enhance the objection review process and limit the number of disputes going on appeal. However, the addition of time should be supplemented by allocation of additional resources to the KRA to enhance capacity to effectively deal with objections comprehensively within the statutory period.

k) Integration to Data Management and Reporting Systems

The Bill proposes to give the Commissioner the power to issue a written notice requiring a taxpayer to integrate its data management and reporting systems with KRA's electronic tax systems (such as iTax). The Data Management and Reporting System was established vide the Finance Act, 2023 and was aimed at allowing a framework for the Commissioner to collect transactional data for purposes of determining applicable taxes. Therefore, this proposal of integrating the Data Management and Reporting System to the KRA's electronic tax system (iTax) is aligned to the KRA's commitment to leverage technology to reduce tax leakages.

The Bill further goes to propose criminalising any failure to adhere to the notice by Commissioner to integrate such systems to a penalty that does not exceed KES 2 million for every month or part thereof that the failure continues.

l) Exclusion of Weekends and Public Holidays in the Computation of Time

The Bill proposes to amend the TPA by providing that in computing the period for submitting or lodging a tax return, application, notice or other documents or, the payment of a tax, or taking any other action under a tax law, the period shall not include Saturdays, Sundays, or public holidays.

The express exclusion of weekends and public holidays in computing time is aimed at providing clarity on computing timelines for compliance with tax obligations and is a welcome proposal.

m) Employees Working Remotely Outside Kenya Now Required to have a PIN

The Bill proposes include in the transactions for which a Personal Identification Number (PIN) is required, an employee working remotely outside Kenya for a Kenyan employer. This will ensure tax compliance by the remote workers to remit taxes applicable on their income derived or accrued in Kenya.

5. AMENDMENTS TO THE MISCELLANEOUS FEES AND LEVIES ACT

Effective date of all amendments: 1 July 2024

a) Exclusion from Export and Investment Promotion Levy for Goods Imported under a Special Operating Framework Agreement with the Government

The Bill proposes to exclude goods imported under a Special Operating Framework Agreement with the Government from export and investment promotion levy. The Special Operating Framework Agreement program was re-introduced in the ITA in 2022 to provide a framework for companies incorporated for the purpose of undertaking the manufacture of human vaccines or other manufacturing activities and whose capital investment is at least KES 10 billion. The exclusion from the export and investment promotion levy is integral noting that the Special Operating Framework Agreement program was initiated to incentivise investments in critical sectors.

b) The National Intelligence Services (NIS) Granted Exemptions from IDF and RDL

The Bill proposes to grant an exemption from Import Declaration Fee (IDF) and Railway Development Levy (RDL) on goods and equipment imported by the NIS. This is a welcome move aimed at promoting parity with other security agencies such as Kenya Defence Forces and Kenya Police who are already enjoying similar exemptions.

c) Exemption of Inputs and Machinery Used in the Manufacture of Mosquito Repellents from IDF and RDL

The Bill proposes to exempt inputs, raw materials and machinery used in the manufacture of mosquito repellents from RDL and IDF, subject to the recommendation by the Cabinet Secretary for Health. In our view, this proposed exemption is a welcome move as a means of incentivising investment in the manufacture of mosquito repellents and reducing the costs of purchasing mosquito repellents for Kenyans.

d) Revision of Goods Subject to Export and Investment Promotion Levy

The Bill proposes various amendments to the Third Schedule in relation to the Export and Investment Promotion Levy as follows:

i. Reduction and removal of Export Promotion Levy on certain items

Tariff No.	Tariff Description	Current Rate	Proposed Rate
2523.10.00	Cement clinker	17.5% of the customs value	10% of the customs value
7207.11.00	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	17.5% of the customs value	0
7213.91.10	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	17.5% of the customs value	0
7213.91.90	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; other	17.5% of the customs value	0
4804.21.00	Sack kraft paper; unbleached	10% of the customs value	0
4804.31.00	Other kraft paper and paper board weighing 150g/m^2 or less: Unbleached	10% of the customs value	0
4819.30.00	Sacks and bags having a base of a width of 40cm or more	10% of the customs value	0
4819.40.00	Other sacks and bags, including cones	10% of the customs value	0

ii. Scope of Export Promotion Levy enhanced

The Bill proposes to impose the Export Promotion Levy on the following products and goods:

Tariff No.	Tariff Description	Proposed Rate
Chapter 42	Articles of leather	20% of customs value
Chapter 64	Imported footwear	20% of customs value
2207.20.00	Denatured ethyl alcohol and other spirits	3% of the customs value
2208.40.00	Rum and other spirits obtained by distilling fermented sugar	3% of the customs value

2208.60.00	Vodka	3% of the customs value
3401.30.00	Organic surface-active products and preparations for washing the skin	3% of the customs value
4804.11.00	Kraft liner	3% of the customs value
4804.29.00	Uncoated kraft paper and paperboard, in rolls or sheets, other than that of heading 48.02 or 48.03 — Other	3% of the customs value
0401.20.00	Milk and cream of a fat content by weight, exceeding 1% but not exceeding 6%	3% of the customs value
69.10	Ceramic sinks, wash basins, pedestals, baths, bidet, water closet pans, flushing cistern, urinals and similar sanitary fixtures	3% of the customs value
7207.11.00	Billets *(We have noted that the description of Tariff No. 7207.11.00 under the Bill does not match the description of the same Tariff No. under the EAC CET HS Code. Under the EAC CET HS Code the description of the above should be "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."* *On the other hand, the description 'billets' under the EAC CET HS Code is referenced under Tariff No. 7403.13.00.* *As drafted, it is unclear on what items the export promotion levy is supposed to apply to. A clean up on this is required to give clarity to taxpayers)*	10% of the customs value
7321.12.00	Cooking stoves for liquid fuel	3% of the customs value
8711.10.90	Motorcycles with internal combustion engine not exceeding 50cc *(We have noted that the description of Tariff No. 8711.10.90 under the Bill does not match the description of the same Tariff No. under*	3% of the customs value

	the EAC CET HS Code. Under the EAC CET HS Code the description of the above should be "Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars; <u>with internal combustion piston engine of a cylinder capacity exceeding 50 cc but not exceeding 250 cc</u>." A clean up on this is required to give clarity to taxpayers)	
8711.20.10	Motorcycles with internal combustion engine exceeding 50cc but not exceeding 250cc *(We have noted that the description of Tariff No. 8711.20.10 under the Bill does not match the description of the same Tariff No. under the EAC CET HS Code. Under the EAC CET HS Code the description of the above should be "Motorcycles ambulances." A clean up on this is required to give clarity to taxpayers)*	3% of the customs value
8711.20.90	Motorcycles with internal combustion engine exceeding 50cc but not exceeding 250cc *(We have noted that the description of Tariff No. 8711.20.90 under the Bill does not match the description of the same Tariff No. under the EAC CET HS Code. Under the EAC CET HS Code the description of the above should be "Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars; <u>with internal combustion piston engine of a cylinder capacity exceeding 250 cc but not exceeding 500 cc</u>." A clean up on this is required to give clarity to taxpayers)*	3% of the customs value
8711.30.90	Motorcycles with internal combustion engine exceeding 250cc but not exceeding 500cc *(We have noted that the description of Tariff No. 8711.30.90 under the Bill does not match the description of the same Tariff No. under the EAC CET HS Code. Under the EAC CET HS Code the description of the above should be "Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars; <u>with internal</u>*	3% of the customs value

	<u>combustion piston engine of a cylinder capacity exceeding 500 cc but not exceeding 800 cc</u>." A clean up on this is required to give clarity to taxpayers)	
8711.40.90	Motorcycles with internal combustion engine exceeding 500cc but not exceeding 800cc *(We have noted that the description of Tariff No. 8711.40.90 under the Bill does not match the description of the same Tariff No. under the EAC CET HS Code. Under the EAC CET HS Code the description of the above should be "Motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars; <u>with internal combustion piston engine of a cylinder capacity exceeding 800 cc</u>." A clean up on this is required to give clarity to taxpayers)*	3% of the customs value
8711.50.90	Motorcycles with internal combustion engine exceeding 800cc *(We have noted that the description of Tariff No. 8711.50.90 under the Bill does not match the description of the same Tariff No. under the EAC CET HS Code. Under the EAC CET HS Code the description of the above should be "Other motorcycles (including mopeds) and cycles fitted with an auxiliary motor, with or without side-cars; side-cars." A clean up on this is required to give clarity to taxpayers)*	3% of the customs value
8711.60.00	Electric motorcycles	3% of the customs value
9403.10.00	Metal furniture of a kind used in offices	3% of the customs value
9403.20.00	Other metal furniture	3% of the customs value
9403.30.00	Wooden furniture for office	3% of the customs value
9403.40.00	Wooden furniture for kitchen	3% of the customs value
9403.50.00	Wooden furniture for bedrooms	3% of the customs value
9403.60.00	Other wooden furniture	3% of the customs value
9403.70.00	Furniture of plastics	3% of the customs value

9403.82.00	Furniture of bamboo	3% of the customs value
9403.83.00	Furniture of rattan	3% of the customs value
9403.89.00	Furniture of cane, osier or similar material	3% of the customs value
9403.91.00	Parts of furniture, of wood	3% of the customs value
9403.99.00	Parts of furniture, not of wood	3% of the customs value
9404.10.00	Mattress supports	3% of the customs value

e) Introduction of Eco-Levy on Certain Goods and Products

The Bill proposes the introduction of an eco-levy on certain goods and products. In our view, the introduction of eco levy is in line with the government's commitment to promote environmental conservation and sustainability thus mitigating negative impacts of climate change.

Item	EAC CET HS Code	Rate (KES)
Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, consorting machines, coin-counting or wrapping machines, pencil sharpening machines, perforating or stapling machines) – other	8472.90.00	98 per unit
Calculating machines and pocketsize data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket issuing machines and similar machines, incorporating a calculating device; cash registers – incorporating a printing device.	8470.21.00	225 per unit
Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – Portable automatic data processing machines, weighing not more than 10kg, consisting of at least a central processing unit, a keyboard and a display.	8471.30.00	225 per unit
Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere	8471.41.00	225 per unit

specified or included – comprising in the same housing at least a central processing unit and an input and output unit, whether or not combined		
Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – other, presented in the form of systems	8471.49.00	225 per unit
Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – processing units other than those of sub-heading 8471.41 or 8471.49, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units.	8471.50.00	225 per unit
Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – input or output units, whether or not containing storage units in the same housing	8471.60.00	225 per unit
Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – other units of automatic data processing machines	8471.80.00	225 per unit
Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included – other	8471.90.00	225 per unit
Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin sorting machines, coin-counting or wrapping machines, pencil sharpening machines, perforating or stapling machines) – other	8472.90.00	225 per unit
Arts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally	8473.30.00	98 per unit

with machines of headings 84.70 to 84.72. Parts and accessories of automatic data processing machines and units thereof – parts and accessories of the machines of heading 84.71.		
Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – line telephone sets with cordless handsets	8517.11.00	225 Per Unit
Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – smartphones	8517.13.00	225 per unit
Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – Other telephones for cellular networks or for other wireless networks	8517.14.00	225 per unit
Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other.	8517.18.00	225 per unit
Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other	8517.61.00	225 per unit

data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): base stations		
Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): base stations: machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.	8517.62.00	225 per unit
Telephone sets, including smartphones and other telephones, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 84.43, 85.25, 85.27 or 85.28 – other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): base stations: other.	8517.69.00	225 per unit
Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones and earphones whether or not combined with a microphone, and sets consisting of a microphone and one or more loudspeakers; audio-frequency electric amplifiers; electric sound amplifier sets – microphones and stands therefor	8518.10.00	98 per unit
Sound recording or reproducing apparatus – using magnetic, optical or semiconductor media.	8519.81.00	98 per unit

Transmission apparatus for radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – transmission apparatus for radiobroadcasting or television	8525.50.00	98 per unit
Transmission apparatus for radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – transmission apparatus incorporating reception apparatus.	8525.60.00	98 per unit
Transmission apparatus for radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – high-speed goods as specified in Subheading Note 1 to this Chapter.	8525.81.00	98 per unit
Transmission apparatus for radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – Television cameras, digital cameras and video camera recorders: Other, radiation hardened or radiation-tolerant goods as specified in Subheading Note 2 to this Chapter	8525.82.00	98 per unit
Transmission apparatus for radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – television cameras, digital cameras and video camera recorders: other, night vision goods as specified in Subheading Note 3 to this Chapter.	8525.83.00	98 per unit
Transmission apparatus for radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders – television cameras, digital cameras and video camera recorders: other	8525.89.00	98 per unit
Radar apparatus, radio navigational aid apparatus and radio remote control apparatus – other: radio navigational aid apparatus.	8526.91.00	98 per unit

Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – radiobroadcast receivers capable of operating without an external source of power: pocket-size radio cassette players.	8527.12.00	225 per unit
Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – radiobroadcast receivers capable of operating without an external source of power: other apparatus combined with sound recording or reproducing apparatus	8527.13.00	225 per unit
Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – radiobroadcast receivers capable of operating without an external source of power: other	8527.19.00	225 per unit
Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles: combined with sound recording or reproducing apparatus	8527.21.00	225 Per Unit
Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles: other.	8527.29.00	225 per unit
Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – other: combined with sound recording or reproducing apparatus	8527.91.00	225 per unit
Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock – other: not combined with sound recording or reproducing apparatus but combined with a clock.	8527.92.00	225 per unit
Reception apparatus for radiobroadcasting, whether or not combined, in the same housing, with sound	8527.99.00	225 per unit

recording or reproducing apparatus or a clock – other: other.		
Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: not designed to incorporate a video display or screen.	8528.71.00	1275 per unit
Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: other, colour; unassembled.	8528.72.10	1275 per unit
Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: other, monochrome; unassembled.	8528.73.10	1275 per unit
Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus –reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: other, monochrome; other.	8528.73.90	1275 per unit
Thermionic, cold cathode or photocathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathoderay tubes, television camera tubes) – cathode-ray television picture tubes, including video monitor cathode-ray tubes: colour	8540.11.00	1800 per unit

Thermionic, cold cathode or photocathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathoderay tubes, television camera tubes) – cathode-ray television picture tubes, including video monitor cathode-ray tubes: monochrome	8540.12.00	1800 per unit
Thermionic, cold cathode or photocathode valves and tubes (for example, vacuum or vapour or gas filled valves and tubes, mercury arc rectifying valves and tubes, cathoderay tubes, television camera tubes) – television camera tubes, image converter and other photocathode tubes	8540.20.00	1800 per unit
Oscilloscopes, spectrum analysers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 90.28; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionising radiations – other instruments and apparatus, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers)	9030.40.00	98 per unit
Rubber tyres	Chapter 40	1000 per unit
Diapers	Chapter 96	150 per kg
Batteries or dry cells	Chapter 85	750 per kg
Plastic packing materials	Chapter 39	150r kg

6. OTHER AMENDMENTS

Effective date of all amendments: 1 July 2024

a) KRA to Gain Access to Personal Data for Tax Administration Purposes

The Bill proposes to exempt the processing of personal data by the KRA from the provisions of the Data Protection Act, 2019 (DPA) where the disclosure is necessary for the assessment, enforcement or collection of any tax or duty under a written law.

The DPA pits the rights of a data subject against the duties of the data processor and sets out stringent measures on the data processor in relation to the processing of personal data. In particular, the data subject has a right under the DPA to object to the processing of a part or all of their personal data. Further to this, the DPA also provides that a data processor when collecting personal data has a duty to notify the data subject as to whether the collection is voluntary or mandatory.

In the recent past subsequent to enactment of the DPA, the KRA has faced difficulties in being able to collect and process personal data for tax purposes and in some instances, they have had to obtain court orders to obtain or process personal data. The Bill thus proposes to give the KRA the leeway to process personal data where the personal data is necessary for the assessment, enforcement or collection of any taxes or duty under any written law.

b) Restriction on Sale of Affordable Housing Units Removed

The Bill proposes to delete the provision restricting purchasers of affordable housing units from selling the housing units or any interests therein. The draft Affordable Housing Regulations, 2024 sought to clean up this provision by providing that a purchaser shall not sell the housing unit until eight years after completion of payment for the housing unit, after which they may sell the housing unit subject to approval of the Affordable Housing Board.

We point out that the main objective of the affordable housing scheme i.e., to facilitate for the provision of adequate affordable housing may be sidetracked as the program may turn into a business venture for the housing unit owners.

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