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NEWSFLASH KENYA

KENYA ASSENTS AFFORDABLE HOUSING ACT, 2024

Issue:  
26 March 2024

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### Kenya assents Affordable Housing Act, 2024

#### BACKGROUND

In this issue, we discuss the assent of the Affordable Housing Act, 2024 (the Act) in Kenya and we highlight the key changes incorporated in the new Act.

The Affordable Housing Act, 2024 was assented into law by the President of Kenya on 19 March 2024. Subsequently, sections 4 and 5 of the Act relating to imposition of the levy and deductions by employers, became effective on the date of assent, while the rest of the sections of the Act, will become operational via a notice on the Gazette. The assent of the Act created immediate obligations for employers.

Deduction and remission of the Housing levy as had been introduced by the Finance Act 2023, had been on suspension as per the directions of the High Court of Kenya. An employer is now required to remit in respect of each employee a contribution of 1.5 percent of the employee's monthly gross salary and the employee's contribution of 1.5 percent of the employee's monthly gross salary.

#### DETAILED DISCUSSION

The Act provides for four categories of housing units and defines them as follows:

- A social housing unit – a house targeted to persons whose monthly income is below KShs. 20,000
- An affordable housing unit – Housing units targeted for people with monthly income of between KShs. 20,000 and KShs. 149,000
- Affordable middle class housing unit – housing units targeted at individuals with monthly income of over KShs. 149,000
- Rural affordable housing unit – Housing units targeted at people not living in urban areas

Non-salaried persons are also required to make contributions of 1.5 percent of their gross income in accordance with the Act. Previously, non-salaried persons were not covered by the Housing Levy provisions that had been introduced by the Finance Act, 2023, which had been suspended by the High Court.

The Act further amends the Income Tax Act, by introducing a new subsection (1A) under Section 30A of the Income Tax Act to facilitate for resident individuals who prove that they paid the affordable housing levy in a year of income to be entitled to affordable housing relief for that year of income. The amount of relief shall be 15 percent of the employee's contribution but not exceeding KShs. 108,000 per annum (KShs. 9,000 per month).

In addition, the Cabinet Secretary, through a gazette notice may exempt from the levy any income or class of income or any person or category of persons. Currently there are no exemptions extended to any persons or any income class.

The Second Schedule of the Act has also amended various other Acts. Section 31B and Section 31C of the Employment Act of 2007 now stand repealed. Further, the Act has amended the Income Tax Act by inserting paragraph (ga) under Section 15, which allows for deductibility of the employers' portion of the Housing Levy contributions. Additionally, section 30A of the Income Tax Act has been amended to provide relief for resident individuals making contributions towards the levy.

## ARISING IMPLICATIONS

Employers are thus required to account for the Housing Levy from the March 2024 payroll moving forward. It is the responsibility of the employer to remit the levy by the ninth day of the following month. A 3 percent penalty on the unpaid amount shall be levied on persons who fail to remit the levy by the due date. Penalties shall accrue for each month or part thereof that the levy remains unpaid and shall be recovered as a civil debt for the person liable to remit the amount.

While the Act as it currently stands does not define the constituents of a gross salary, the Kenya Revenue Authority (KRA) had previously clarified that gross monthly salary constitutes basic salary and regular cash allowances. The regular allowances include housing, travel or commuter and car allowances, as well as any regular cash payments but exclude noncash payments as well as income not paid regularly such as leave allowance, bonus, gratuity, pension, severance pay or any other terminal dues and benefits. Since the new Act has retained KRA as the collector of the levy, we expect that the guidance relating to gross salaries to apply.

The allowability of expenditure incurred in the payment of Housing levy deductions is a welcome move that will grant reprieve to both employers and other business owners. Further, employees and other non-salaried individuals appreciate the relief granted on contributions made on their gross monthly income.

It is also not clear whether employers will be allowed to prorate deductions for the month of March 2024, given that the Act was assented on 19 March 2024.

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