

# Rödl & Partner

NEWSFLASH KENYA

FINANCE ACT 2023  
ANALYSIS

Issue:  
10 July 2023

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ANALYSIS

Issue:  
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## → Background

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On 21 June 2023, the National Assembly passed the contentious and much discussed Finance Bill 2023. This was swiftly followed by Presidential assent on 26 June 2023. The Finance Act 2023 has largely enacted the proposals in the Bill touching on the Income Tax Act, VAT Act, Excise Duty Act, Tax Appeals Tribunal Act, Tax Procedures Act and the Miscellaneous Fees and Levies Act. The commencement dates for the various legal changes will

be on 1 July 2023, 1 September 2023 and 1 January 2024.

The Cabinet Secretary in charge of the National Treasury also highlighted various customs proposals in his National Budget Speech read on 15 June 2023.

In this issue we have outlined the changes under the Finance Act 2023 and expected customs changes to be effected as per the East Africa Community Customs Management Act.

## → Income Tax Act changes

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### Clarity on Taxable value of Gambling Taxes – Effective 1 July 2023

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The definition of winnings now refers to pay-outs from betting, gaming, lottery, prize competition, gambling or similar transactions under the Betting, Lotteries and Gaming Act excluding the amount staked or wagered.

**Comment:** The Act has now clarified the taxable value on which gambling taxes will be applied on.

### New Taxes for Digital Economy Players – Effective 1 July 2023 (for DCT); Effective 1 September (for DAT)

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Payments made to resident digital content creators or entertainers, creators of social, literal, artistic or educational material who ply their trade in electronic media or channels are now subject to withholding tax. Examples of local and foreign electronic media platforms are Viusasa and K24 plus in Kenya and Youtube and Tiktok. This Digital Content Tax (DCT) shall apply at a withholding tax rate of 5 percent for resident creators and 20 percent for non-residents.

Furthermore, income from trade in digital assets such as cryptocurrency is now subject to tax. The Digital Asset Tax (DAT) is chargeable at a rate of 3 percent of the transfer or exchange value of the digital asset. The owners of digital asset platforms are required to deduct DAT and remit it to the Commissioner within 5 working days after making the deduction. A non-resident person who owns such a platform is required to register under the simplified tax regime.

**Comment:** It is a welcome move towards widening the tax base. However, the application of transfer/ exchange value when taxing gains from digital assets is unfair bearing in mind that its gains are market-driven.

### Capital Gains Tax (CGT) on indirect transfers and related updates – Effective 1 July 2023

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The Act extends the taxation of indirect transfers, currently applicable in the Extractives sector only, to all property covered under the definition of “property” chargeable to capital gains tax. In the case of alienation of shares of a Kenyan company or interests in a partnership or trust indirectly, CGT will only apply if at any time during the 365 days preceding their alienation the shares or comparable interests derived more than 20 percent of their value directly or indirectly from immovable property situated in Kenya. The 20 percent threshold will also apply to the extractives sector.

Other updates on CGT are:

- Tax point – it is set to be on the earlier of receipt of the full purchase price by the vendor or registration of the transfer.
- Tax exemption upon internal restructuring: the exemption will only apply if the property transfer is not to a third party and within a group that is over 24 months old.

**Comment:** The inclusion of gains made from transfer of indirect ownership within the scope of income tax will loop in common tax planning strategies such as triangulation arrangements. However, the double tax impact may discourage foreign direct investments into Kenya.

## Moratorium on the new thin capitalization rule and application to foreign loans only – Effective 1 July 2023

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Currently the Act restricts allowability of interest expense for companies to 30 percent of the reported EBITDA. This rule greatly disadvantaged most highly leveraged start-ups and MSMEs whose performance is usually dismal in at least the first 5 years. The Act introduces a grace period of 3 subsequent years. In addition, the interest to be restricted will only relate to foreign-sourced loans. However, the following entities will be removed from the list of those exempted from the thin cap rule:

- companies engaged in manufacturing with a cumulative investment of at least Kes. 5 billion in the preceding 5 years from the commencement of this provision
- companies engaged in manufacturing whose cumulative investment (located outside Nairobi City County and Mombasa County) is at least Kes. 5 billion

**Comment:** The 3-year grace period is a good reprieve in the current harsh business environment. Furthermore, the application of the interest restriction to foreign loans only is a matter that has been canvassed since the thin capitalization rules were introduced in Kenya. It will confirm the government's policy of protecting the local financial markets against attractive external loans.

## Adoption of AAK rates in reimbursement of mileage costs and exemption of asset-backed payments to public officers – Effective 1 July 2023

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Employers are now required to align their mileage reimbursement policies to the rates published by the Automobile Association of Kenya (AAK). Such mileage allowances or reimbursements do not qualify as gains from employment.

**Comment:** This realigning of the mileage rates with those of AAK will assert the principles of certainty and equity in taxation since different employers have different policies and rates for mileage reimbursements.

## Taxation of members' club and trade associations – Effective 1 July 2023

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Club entrance and subscription fees are now allowed against an employer's income.

The Pay As You Earn (PAYE) treatment of club entrance and subscription fees shall now be coined on the allowability of the expense in the employer's corporate tax computation.

**Comment:** This change revisits the Covid-era amendment which disqualified club entrance and subscription fees as allowable expenses in computing corporate tax. Most employers meet such expenses on behalf of their employees as a tool of trade (registration and practicing licenses) and business development opportunity. Likewise, we opine that employees should not be unfairly taxed on an expense that is a necessary tool of trade that benefits the employer's business.

## Updates Employee Share Ownership and Purchase Plans – Effective 1 July 2023

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The calculation of ESOP benefit will now be based on the difference between the option price and market value on the exercise date. Where the shares are not listed the market value will be based on a reasonable valuation on the exercise date without necessarily obtaining the Commissioner's approval.

Separately, the taxation of a share benefit issued to employees of an "eligible start-up" will be deferred and applied within 30 days of the earlier of:

- the expiry of 5 years from the end of the year of the award of the shares
- the disposal of the shares by the employee; or
- the date the employee ceases to be an employee of the eligible start-up

An eligible start-up has been defined as a Kenyan company that has:

- an annual turnover of not more than Kes. 100 million
- does not carry-on management, professional or training business
- not been formed as a result of splitting or restructuring of an existing entity
- been in existence for a period of not more than 5 years

**Comment:** The moratorium on taxation of share benefits to employees of an eligible start-up is a welcome move that enable them recruit competitively in the labour market. However, the exclusion of service businesses knocks out most players especially in ICT (like fintechs and innovation hubs).

## Introduction of Profit Repatriation Tax for non-residents with Permanent Establishments (PEs) – Effective 1 January 2024

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Registered Foreign branches or any form of permanent establishment in Kenya will now pay tax on repatriated income for each financial year. To this effect the corporate tax rate for non-residents has been reduced to 30 percent, and an additional tax on repatriated profit of 15 percent introduced.

The non-allowability of remuneration to non-resident directors, executive and general administrative expenses has been abolished. The repatriated profit is calculated as follows:

$$R = A_1 + (P - T) - A_2$$

Where—

R = repatriated profit;  
 A<sub>1</sub> = net assets at the beginning of the year;  
 P = net profit for the year of income calculated in accordance with generally accepted accounting principles;

T = tax payable on the chargeable income; and

A<sub>2</sub> = net assets at the end of the year

**Comment:** This change will ensure foreign businesses operate at a level playing field with local companies. The profit repatriation tax will only apply where the financials prove a change in revenue reserves.

#### Other Tax rate and threshold changes

| Tax obligation  | Old  | New  |
|---|--|--|
| Turnover tax rate and threshold   | - Tax rate of 1%<br>- Threshold of between Kes. 1 million to Kes. 50 million | - Tax rate of 3%<br>- Threshold of between Kes. 1 million to Kes. 25 million             |
| Individual income tax rates:  |  |  |
| On the first Kes. 288,000   | 10%  | 10%  |
| On the next Kes. 100,000  | 25%  | 25%  |
| On the next Kes. 5,612,000  | 30%  | 30%  |
| On the next 3,600,000   | 30%  | 32.5%  |
| On all income over Kes. 9.6 M   | 30%  | 35%  |
| Corporate Tax on non-resident company with a PE   | 37.5%  | 30%  |
| Corporate tax rate for a company undertaking the manufacture of human vaccines  | 30% or 37.5%   | 10% (1 January 2024)   |
| WHT on rental income by appointed agents  | 10%  | 7.5% (1 January 2024)  |
| WHT on resident payments for sales promotion, marketing, advertising services, the aggregate value of which is Kes. 24,000 in a month or more     | 0%   | 5%   |
| Advance tax on vans, pick-ups, trucks, prime movers, trailers and lorries (except tractors or trailers used for agricultural purposes) – annually | Higher of Kes. 1,500/ ton of load capacity or Kes. 2,400                     | Higher of Kes. 2500/ ton of load capacity p.a or Kes. 5,000 p.a (1 January 2024)         |
| Advance tax on saloons, station-wagons, mini-buses, buses and coaches   | Higher of Kes. 60 per passenger capacity per month or Kes. 2,400             | Higher of Kes. 100/ passenger capacity per month or Kes. 5,000 per year (1 January 2024) |
| Residential rental income tax   | 10%  | 7.5% (1 January 2024)  |

**Comment:** The slight reduction of taxes touching on the real estate sector is welcome. On the contrary the introduction of a super tax (35 percent) on individuals and advance taxes will impact on employment.

## Post-retirement medical fund – Effective 1 January 2024

A Kenyan resident contributing to a post-retirement medical fund (PRMF) shall be entitled to a personal relief equal to the lower of 15 percent of the contribution paid or Kes. 60,000 p.a.

**Comment:** The legal status of a PRMF is not clear since the tax incentives provided confirm that it should not necessarily be a “registered retirement benefit scheme” and is allowed to transfer its funds to a medical insurance provider tax-free.

## Adoption of electronic tax invoicing technology in income tax computations – Effective 1 September 2023

Any expenditure or loss supported by invoices will have to be generated from an eTIMS except where it relates to emoluments, imports, investment allowances, interest, airline passenger ticketing and similar payments.

**Comment:** The successful implementation of TIMs in VAT compliance will now be extended to income tax in order to curb tax evasion through falsification of documents.

## Transfer Pricing updates – Effective 1 January 2024

- Calculation of taxable income from intellectual property: Qualifying intellectual property income that is subject to a preferential tax rate shall be computed as follows:

$$I = \frac{Q}{T} \times P$$

Where—

I = income receiving tax benefits;

Q = research and development expenditures made by the taxpayer, excluding acquisition costs and related party outsourcing costs;

T = research and development expenditures made by the taxpayer, including acquisition costs and related party outsourcing costs; and

P = intellectual property income including royalties, capital gains and any other income from the sale of an intellectual

property asset including embedded intellectual property income calculated under transfer pricing principles:

Intellectual property losses shall only be deducted against intellectual property income.

- Exemption from country-by-country (C-by-C) reporting: - A Kenyan resident constituent entity (CE) of a multinational enterprise (MNE) group shall be exempted from C-by-C reporting if:

- the ultimate parent entity (UPE) is obligated to file a C-by-C report in its jurisdiction of tax residence

- the jurisdiction in which the (UPE) is resident lacks a current international tax agreement with Kenya and has a competent authority agreement with Kenya at the time of filing the C-by-C report for the reporting financial year

- there is no systemic failure of the jurisdiction of tax residence of the UPE reported by the Commissioner to the CE resident in Kenya

- It has also been clarified that the filing threshold (for both UPE & CE) is a consolidated group turnover – including extraordinary or investment income is at least Kes. 95 billion during the financial year immediately preceding the reporting financial year as reflected in its consolidated financial statements for such preceding financial year.

- Mandatory filing of Master and Local files by both UPEs and CEs: - It is now clear that both UPEs and CEs that are resident in Kenya must maintain and file their master and local files regardless of meeting the turnover threshold for C-by-C reporting.

A UPE will also now be properly defined to be a holding entity as follows:

- is not controlled by another entity; and
- owns or controls, directly or indirectly, one or more CEs of an MNE group.

**Comment:** The transfer pricing legislation in Kenya is shaping up and realigning with international practice very fast. It is high time that any MNE group with operations in Kenya invests in compliance and setting up proper internal controls.

## Addition of other manufacturing activities within the scope of Special Operating Framework Arrangement (SOFA) – Effective 1 July 2023

The applicability of special tax rates between the government and companies has now been extended to include those engaged in manufacturing activities including refining business.

**Comment:** This is set to encourage foreign direct investments that will be employed in the new administration's housing agenda and manufacturing ventures. These are key pillars in the framework of Bottom-Up Economic Transformation Agenda.

## Other Withholding tax changes – Effective 1 July 2023

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The Act has specified that a person who deducts rental income tax shall remit the deducted amount to the commissioner within five working days, accompanied with a return in writing of the tax deducted. Only a person appointed by the commissioner in writing may deduct rental tax on behalf of the owner of a premise. The same timeline-five days, applies to all withholding taxes remissions moving forward.

**Comment** This is a welcome move to widen the tax base and will also facilitate efficiency by the commissioner in collection of taxes.

## Criteria for exemption of Charitable Organizations from income tax – Effective 1 July 2023

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The term “institution, body of persons or irrevocable trust, of a public character” has been clarified to refer to an entity that:

- is established to benefit the public in a transparent and accountable manner without restriction or discrimination
- is allowed to impose any level of charges or fees for services rendered
- utilises its assets or income exclusively to carry out the purpose for which the entity was established
- does not confer a private benefit to an individual

**Comment:** The introduction of these criteria (previously prescribed in a subsidiary legislation i.e., Income Tax Charitable donations Rules) will ascertain the checkpoints for KRA when processing applications for income tax exemptions. Currently the KRA seems to exercise a lot of discretion when processing and even rejecting applications for income tax exemptions.

## Addition of Tax Exempt Incomes – Effective 1 July 2023

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The Finance Act 2023 has added the following incomes as exempted from tax

- Royalties paid to a non-resident person by a company undertaking the manufacture of human vaccines;
- Interest paid to a resident person or non-resident person by a company undertaking

- Investment income from a post-retirement medical fund, whether or not the fund is
- Income earned by a non-resident contractor, sub-contractor, consultant or employee involved in the implementation of a project financed through a one hundred percent grant under an agreement between the Government and the development partner, to the extent provided for in the Agreement:

- Provided that the non-resident is in Kenya solely for the implementation of the project financed by the one hundred percent grant.
- Gains on transfer of property within special economic zone enterprise, developer and operator
  - Royalties, interest, management fees, professional fees, training fees, consultancy fee, agency or contractual fees paid by a special economic zone developer, operator or enterprise, in the first ten years of its establishment to a non-resident person.

**Comment:** These will further boost foreign direct investments. However, the exemption of non-resident contractors, sub-contractors, consultants or employees involved in official aid-funded projects is retrogressive compared to the previous regime's stand of collecting taxes from these persons.

## Investment allowance changes – Effective 1 January 2024

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1. Reintroduction of “industrial building allowance”: The allowance will be at a rate of 10 percent (no specification of whether at reducing balance or straight line) and applied on any building in use for the purpose of transport, bridge, tunnel, inland navigation water and electricity or hydraulic power undertaking.
2. Introduction of “Dock allowance”: It will apply at a rate of 10 percent in equal instalments on a container terminal berth, harbour, wharf, pier, jetty, storage yard, or other works in or at which vessels load or unload merchandise but does not include a pier or jetty used for recreation.

The following definitions have also now been offered:

- “Civil works” will include earthworks for telecommunication equipment and construction works undertaken in connection with the installation and maintenance of telecommunication equipment and related structures.
- “Machinery used for agriculture” means machinery used directly in agricultural activities including tilling, planting, irrigation, weeding and harvesting.
- The definition of ‘manufacture’ has been expanded to include refinery activities.

- “Telecommunications equipment” includes civil works deemed as part of the telecommunication equipment or civil works that contribute to the use of the telecommunication equipment.
- The 100 percent investment allowance rate will now only apply to buildings used for manufacture, hotel buildings and machinery used for manufacture.

**Comment:** The overhaul of the Second schedule to the ITA during the famous CoVID-19 amendments left out a number of industries and industry developments (especially in the blue economy) which are now being adopted gradually.

## → VAT Act changes

Repeal of the 8 percent tax rate regime – Effective 1 July 2023

The Finance Act 2023 has abolished the 8 percent tax rate regime to retain a 3-tier regime of 0 percent, 16 percent and exempt only. This change will affect petroleum and most related products under the tariff families 2709, 2710 and 2711 (comprising of kerosene, gasoline, white spirit, natural gas, jet fuel among others).

**Comment:** Petroleum and its related products “fuel” the engines in most sectors especially transport and manufacturing. In January 2023 the price of fuels contributed an all-time high of 2.4 percent of the month’s inflation rate of 9 percent. The leap of this rate together with its ripple effect might lead to an astronomical economic impact.

Clarity on applicability of VAT on all digital marketplace supplies or supplies made over the internet or an electronic network – Effective 1 July 2023

Last year the Finance Act 2022 excluded supplies made over the internet or an electronic network or through a digital marketplace from being treated as imported services that are subject to reverse charge mechanism. This was supposed to ensure the VAT on all these supplies is accounted for by the suppliers from an export country through the simplified tax regime.

The Finance Act 2023 now reinforces the change by eliminating any ambiguity on this intended tax collection mechanism by confirming that the supplies indeed qualify as “supplies made in Kenya” and are not subject to the turnover threshold of Kes. 5 million.

**Comment:** The clarification signifies the confidence of KRA in the simplified tax regime.

Tax point for Kenya Airways – Effective 1 July 2023

The Act has offered guidance into the applicability of VAT on supplies made in the aviation sector. Specifically, the national carrier, Kenya Airways, which is largely a taxable entity as opposed to other foreign-owned international carriers will now be deemed to have made supplies on the date of delivery of goods or performance of services.

**Comment:** This clarification has been solicited especially by aviation industry players seeking to comply with the Value Added Tax (Electronic Tax Invoices) Regulations, 2020. However, the main bone of contention has been the challenge of ascertaining the taxable value of a supply by the set time. This is caused by the fact that current electronic tax registers/software are not compatible with IATA’s Simplified Invoicing and Settlement (SIS) which is an online platform that streamlines processes globally by enabling the exchange of electronic data among international airlines and between airlines and direct operating cost suppliers. Furthermore, there are various interline and code share agreements between airline operators that necessitate pro-ration and constant revenue sharing. Air tickets are also prone to changes and reissuance because of passenger re-routing and travel date changes. These changes essentially reflect in revenue discrepancies.

Conditions for claiming input tax – Effective 1 July 2023

The Act has provided the following conditions mandatory before a registered taxpayer claims input tax on a transaction:

- the person holds the required supporting documentation
- the registered supplier has declared the sales invoice in a return

**Comment:** It is still not clear how the KRA will expect a purchaser of taxable goods to enforce compliance by its supplier without any statutory powers.



## Tax on Loss compensation by insurance providers – Effective 1 July 2023

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The Act now deems compensation for loss of a taxable supply whose input tax had been claimed as a supply, and the VAT shall be determined as follows:

- if the compensation includes VAT, the compensation shall be declared as inclusive of VAT
- if the compensation does not include VAT, the compensation shall be declared as exclusive of VAT

**Comment:** The change fairly places the condition that the VAT on an insurance compensation will only apply if input tax had been claimed. On the other hand, it will be unfair to apply VAT if the compensation amount does not include VAT. However, this may compel insurance claimants to always include VAT in their valuations if they qualify as taxable supplies.

## Archiving of VAT records – Effective 1 July 2023

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The condition to maintain full and true written records of every VAT transaction in a place in Kenya has been flexed.

**Comment:** The change recognizes the development and existence of offshore and modern storage and archiving options such as cloud storage and outsourced offshore business process centres.

## New criteria for approval of VAT refund on bad debts – Effective 1 July 2023

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The criteria for qualifying for refund of output VAT paid on bad debts has now been specified under the VAT Act as follows:

- The taxpayer has not received any payment from the person liable to pay the tax after a period of 3 years from the date of the supply
- The customer or recipient of supply has
- been placed under statutory management
- through the appointment of an administrator
- receiver, or liquidator

The additional requirements relating to VAT refunds on bad debts are:

- An application deadline of 10 years from the date of supply
- The refund process to comply with the guidance under section 47(5) of the Tax Procedures Act
- The ability to utilize the refund amounts against future VAT liabilities
- Where the tax refunded is subsequently recovered from the recipient of the supply, the same shall be refunded to the Commissioner within 60 days from the date of recovery
- Application of a late payment interest of 2 percent p.m. or part thereof on the tax refunded due and payable for any delays in making the repayment on (d), but subject to 100 percent of the refunded amount.

**Comment:** For a long time it has been assumed that the Commissioner's guidelines on allowability of bad debts (under the Income Tax Act) published in Legal Notice no. 37 of 2011 are applicable in processing of VAT refunds on bad debts. The simpler requirements and extended timeline (10 years) under the Finance Act 2023 will offer a reprieve to the tough business environment in Kenya characterized by court delays in business law processes.

## Change in classifications – Effective 1 July 2023

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The Act has reclassified various items as tabulated under the **Appendix** section of this publication.

**Comment:** These reclassifications reflect the new administration's policies especially on new tax areas and rebates.

# → Excise duty Act changes

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## Repeal of law on inflationary adjustments – Effective 1 July 2023

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The power of the Commissioner to adjust the rates of excise duty every year in line with prevailing inflation rates has been abolished.

**Comment:** This is set to curb the current plight of increase in prices of basic commodities.

## Sanctioning of offences under the Excise Duty Act 2015 – Effective 1 July 2023

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The Act has outlined the following omissions or commissions as offences:

- defacing or printing over an excise stamp affixed on any excisable goods or package
- knowingly being in possession of excisable goods on which excise stamps have not been affixed and which have not been exempted from the requirements of the Act or its Regulations
- acquiring or attempting to acquire an excise stamp without the authority of the Commissioner
- printing, counterfeiting, making or in any way creating an excise stamp without the authority of the Commissioner
- knowingly being in possession of an excise stamp which has been printed, made or in any way acquired without the authority of the Commissioner
- knowingly being in possession of, conveying, distributing, selling, offering for sale or trading in excisable goods without affixing excise stamps in accordance with the Act or its Regulations made under the Act
- being in possession of, conveying, distributing, selling, or trading in excisable goods which have been affixed with counterfeit excise stamps

Any suspension of an excise license arising from these offences will also be an appealable decision that will be challengeable within 14 days from the suspension notice.

**Comment:** The specification of these offences and introduction of a timeline within which to challenge an arising accusation is in line with the fair administrative actions set out under the Constitution of Kenya.

## Tax point for duty on alcoholic beverages – Effective 1 July 2023

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The Finance Act 2023 has set a timeline for duty on alcoholic beverages to be payable to the Commissioner within 24 hours upon removal of the goods from the stockroom.

**Comment:** The 24-hour timeline will not be practical administratively for most taxpayers.

## Tax point for duty on betting and gaming – Effective 1 July 2023

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The Act has set a timeline to have duty on betting and gaming remitted by a bookmaker within 24 hours from the midnight of the transaction(s) day. Furthermore, the KRA will have powers to require taxpayers in any sector to remit excise duty within the same 24 hours.

**Comment:** The 24-hour timeline will not be practical administratively for most taxpayers. It is also unfair to give the Commissioner discretionary powers to place the 24-hour condition on any taxpayer in whichever sector.

## Change in classifications – Effective 1 July 2023

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The Act has reclassified various items as tabulated under the Appendix section of this publication.

**Comment:** These reclassifications reflect the new administration's policies especially on new tax areas and rebates.

The changes to the First Schedule to the Excise Duty Act, 2015 is tabulated below:

| Description   | Old rate  | New rate   |
|---|---|--|
| Excise duty on white chocolate of heading 1704; chocolate and other food preparations containing cocoa of tariff nos.1806.31.00, 1806.32.00 and 1806.90.00                | White chocolate including chocolate in blocks, slabs or bars of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00 | The Act expands white chocolate subjected for excise duty by including white chocolate of heading 1704; chocolate and other food preparations containing cocoa of tariff nos.1806.31.00, 1806.32.00 and 1806.90.00 |
| Motorcycles of tariff 87.11 other than motorcycle ambulances and locally assembled motorcycles  |   | The Act has altered description for this item to be Motorcycles of tariff 87.11 other than motorcycle ambulances, locally assembled motorcycles and electric motorcycles   |
| Imported glass bottles (excluding imported glass bottles for packaging of pharmaceutical products)  | 25%   | 35%  |
| Imported Alkyd  | 10%   | 20%  |
| Imported unsaturated polyester  | 10%   | 20%  |
| Imported Emulsion VAM   | 10%   | 20%  |
| Imported Emulsion – styrene Acrylic   | 10%   | 20%  |
| Imported Homopolymers   | 10%   | 20%  |
| Imported Emulsion B.A.M   | 10%   | 20%  |
| Articles of plastic   | Articles of plastic of tariff heading 3923.30.00 and 3923.90.90 at 10%  | The Act imposes excise duty on <b>imported</b> articles of plastics of tariff heading 3923.30.00 and 3923.90.90 only   |
| Sugar confectionary of tariff heading 17.04   | Imported sugar confectionary of tariff heading 17.04 Shs 40.37 per kg   | The Act subjects both imported and local sugar confectionary of tariff heading 17.04 Shs 40.37 per kg  |
| Imported fish   | N/A   | 10%  |
| Powdered juice  | N/A   | Shs. 25 per kg   |
| Imported sugar excluding that purchased by a registered pharmaceutical manufacturer   | N/A   | Shs. 5 per kg  |
| Imported cement   | N/A   | 10% of the value or Shs. 1.50 per kg, whichever is higher  |
| Imported furniture of tariff heading 9403 excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin | N/A   | 30%  |
| Imported cellular phones  | N/A   | 10%  |

|  |     |     |
|--|-----|-----|
| Imported paints, varnishes and lacquers of heading 3208, 3209 and 3210   | N/A | 15% |
| Imported Non-virgin Test liner of heading 4805.24.00   | N/A | 25% |
| Imported no-virgin fluting medium of heading 4805.19.00  | N/A | 25% |
| Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free hinge lid packets of tariff heading 4819.10.00, 4819.20.10 and 4819.20.90 | N/A | 25% |
| Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3920.19.90   | N/A | 25% |
| Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00  | N/A | 25% |

| Description   | Old rate | New rate |
|---|----------|----------|
| Excise duty on betting  | 7.5%     | 12.5%    |
| Excise duty on gaming   | 7.5%     | 12.5%    |
| Excise duty on prize competition  | 7.5%     | 12.5%    |
| Excise duty on lottery (excluding charitable lotteries)   | 7.5%     | 12.5%    |
| Excise duty on fees charged on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competitions. | N/A      | 15%      |

The changes to the Second Schedule to the Excise Duty Act, 2015 are tabulated below.

| Description  | Old rate | New rate                |
|--|----------|-------------------------|
| Disassembled or unassembled kits for local assembly or manufacture mobile phones |          | Exempt from Excise Duty |

## → Other changes in tax law

### Tax Procedures Act (TPA): Challenging of Refund decisions – Effective 1 July 2023

The Finance Act 2022 provided for challenging of refund decisions received from the KRA directly at the Tax Appeals Tribunal. Finance Act 2023 eliminates any doubt on this approach by excluding a “refund decision” from the definition of a “tax decision”.

**Comment:** It reaffirms the direct recourse that taxpayers aggrieved by refund decisions have in the Tax Appeals Tribunal. The decision to deny refund decisions from being reviewed by the Independent Review of Objections office (IRO) of the KRA might flood the Tribunal with frivolous cases such as those involving documents not provided on time.

### Tax Procedures Act: Activation of Tax Agreements and Treaties – Effective 1 July 2023

The Act allows the taking effect of any multilateral agreements or treaties to be as stipulated in the treaties or agreements. It further guides on the enforcement of taxes in Kenya relating to claims against taxpayers from other parties to an international agreement or treaty.

**Comment:** This change begs the question on the role of parliament in overseeing the legislation in these agreements and treaties. Whereas most of them will provide for ratification by parliament, there are a number of treaties and agreements that lack or may lack such safeguards. The tax enforcement changes under the Act may amount to surrender of Kenya’s sovereign rights and infringe on a taxpayer’s constitutional right to a fair hearing.

### Tax Procedures Act: Introduction of an electronic tax invoice system and Data management and Reporting system – Effective 1 September 2023

The Act authorizes the KRA to set up and implement an electronic tax invoice system that shall be capable of inventory recording. In addition, another system for data management and reporting will be set for submission of electronic documents and detailed transactional data relating to those documents.

All resident and PE’s of non-resident persons are strictly allowed to claim expenses whose invoices have been generated through the

electronic tax system except for emoluments, imports, investment allowances, interest, airline passenger ticketing and similar payments. Failure to comply with the electronic tax invoice system will attract a penalty of 200 percent of the tax due.

**Comment:** It will most likely be an expansion of the current eTIMS installation project on VAT registered taxpayers to all taxpayers.

### Tax Procedures Act: Clipping of powers to abandon tax collection and waive penalties and interests – Effective 1 July 2023

The powers of KRA to stop pursuing or enforcing any taxes by reason of doubt or difficulty in recovery of the tax stand to be repealed. Furthermore, KRA will also not be able to waive any penalties and interests imposed on a taxpayer.

**Comment:** It has been widely reported that these powers have been previously used by the KRA to favour the ruling political elite and their businesses. We opine that it would have been more beneficial to introduce regulations that control the current discretionary powers under the law.

### Tax Procedures Act: 2023 Tax Amnesty – Effective 1 July 2023

A universal tax amnesty has been proposed on all penalties, interest or fines where either all principal tax is paid before 31 December 2022, or a payment plan proposal is presented for the outstanding amount. The amnesty is proposed to apply where a person:

- applies for amnesty and pays all the outstanding principal taxes not later than the 30 June 2024
- does not incur a further tax debt
- signs a commitment letter for the settlement of all outstanding taxes that the person may owe

However, the tax avoidance penalty of 200 percent is excluded from this amnesty.

**Comment:** This change serves as an automatic clean-up of all the pending applications for waiver of penalties and interest that existed till 31 December 2022. It is also poised to honour the current administration’s pledge to

support the many start-up businesses whose tax records are tainted by their inability to comply in the past. However, the condition for mandatory future compliance creates doubt on its practicality.

## Tax Procedures Act: Guidance on issuance of agency notices by the KRA – Effective 1 July 2023

KRA will now only raise agency notices in the following circumstances:

- the taxpayer has defaulted in paying an instalment under a payment plan
- the Commissioner has raised an assessment and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period
- the taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines
- the taxpayer has made a self-assessment and submitted a return but has not paid the taxes due before the due date lapsed
- the taxpayer has not appealed against an assessment specified in a decision of the Tribunal or court

**Comment:** The guidelines will protect the KRA from taxpayers who abuse the tax appeal process to delay payment of taxes not in dispute.

## Tax Procedures Act: Updates on withholding taxes – Effective 1 July 2023

The Act reduces the time for remitting withholding VAT to 5 working days after date of deduction. The collection of withholding tax on rental income tax will also be boosted by empowerment of the Commissioner to appoint withholding tax agents who shall also be required to account for the tax within 5 working days after deduction was made.

**Comment:** The clarity on the tax point for withholding tax has been settled to avoid confusion on whether the 5 days will be counted from

date of actual payment or expensing in books of account.

## Tax Procedures Act: Updates on Tax refunds – Effective 1 July 2023

The following changes in processing of tax refunds have been set:

1. Offset of refunds will also apply to outstanding tax debts
2. Refunds to be paid within 6 months or utilized in against other tax liabilities
3. In the case of audit of refund applications, the claims must be approved within 4 months.

**Comment:** These changes continue to reduce timelines that have previously been open to KRA's discretion.

## Tax Procedures & Tax Appeals Tribunal Acts: Updates on Tax dispute resolution processes – Effective 1 July 2023

The process of challenging tax decisions will be improved by the following changes:

1. Invalidation of objection notices – taxpayers will be given 7 days to provide the missing information specified in KRA's invalidation notice
2. Timeline for Alternative Dispute Resolution (ADR) discussions – This will be extended from 90 days to 120 days
3. Replacement of requirement to file a 'tax decision' with an 'appealable decision' to the Tribunal – this reinforces the ability of the Tribunal to be the first court of instance for any tax related case
4. Production of evidence and information to the Tribunal – The TAT Act will allow an Appellant to file any other relevant document that supports its case in its first submissions to the Tribunal

**Comment:** These changes reflect some necessary revisions in law that should fast track the wheels of justice.

## → Customs changes

Changes to the East Africa Customs Management Act – Effective 1 July 2023

The Cabinet Secretary for the National Treasury And Economic Planning mentioned the following Customs proposals in his Budget Speech statement of 15 June 2023 as part of his 2023/24 Budget revenue raising measures:

| Description  | Old rate  | New rate   |
|--|---|--|
| Rice   | 75% custom duty on rice import under the EAC Common External Tariff                                   | Reduced custom duty on imported rice to 35%  |
| Wheat  | 35% custom duty under the EAC Duty Remission Scheme   | Custom duty rate of 10%  |
| Raw materials for manufacture of parts used in the assembly of motor vehicles especially leaf springs, radiators, wiring harness, Completely Knocked Down (CKD) Kits | 10%   | 10%  |
| Iron and Steel Products  | Import Duty rate 35%  | 35% duty rate to continue for one year   |
| Vegetable products   | Import Duty rate 35%  | Import duty rate of 35% for another one year   |
| Inputs for manufacture of animal feed  | N/A   | Duty-free for one year   |
| Inputs for manufacture of baby diapers   | Duty-free   | Duty-free importation extended for a further one year  |
| Imported baby diapers  | Import duty charged at the rate of 35%  | Import duty rate of 35% for a further one year   |
| Leather and foot ware products   | Import duty charged at 35% rate   | Import duty rate of 35% to be retained. Duty-free importation of raw materials and inputs for manufacture of foot ware products to continue for one year                                       |
| Inputs for manufacture of roofing tiles  | Duty-free   | Extension of duty-free importation for a further one year  |
| Paper and paper products   | N/A   | Import duty rate of 35% for the next one year  |
| Goods of timber including matches, particle boards, plywood among other goods of timber  | Specified rates of import duty in addition to ad valorem duty ranging from USD120-USD200/Metric Tonne | Specified rates of import duty to continue in addition to ad valorem duty ranging from USD120-USD200/Metric Tonne. Additionally, imported furniture to be charged import duty at a rate of 45% |

|  |                 |  |
|--|-----------------|--|
| Plastic and rubber products  | 25% import duty | 35% import duty for one year   |
| Smartphones, telephone for cellular networks and wireless networks | 25%             | 25% for a further year<br>Duty-free importation of inputs for assembly of smartphones and other cellular phone |
| Billets for manufacture of wire rods and other similar products    | Duty-free       | 10%  |

## → Miscellaneous Fees and Levies Act changes

### Affordable Housing Levy – Effective 1 July 2023

The Employment Act has been amended to add a monthly 'affordable housing levy' to be imposed separately from the contribution to the affordable housing scheme under the National Housing Development Fund. The purpose of the levy is to provide funds for the development of affordable housing and associated social and physical infrastructure as well as the provision of affordable home financing to Kenyans. It shall be levied as follows:

- Employer contribution: 1.5 percent of each employee's gross monthly salary
- Employee contribution: 1.5 percent of their gross monthly salary
- Due before the ninth day of the following month after the deduction was made
- An employer who fails to comply with this section shall be liable to payment of a penalty equivalent to 2 percent of the unpaid funds for every month the same remains unpaid.

It is important to note that the levy will be subject to the interest relief and affordable housing relief for PAYE purposes.

### Reduction of Import Declaration Fee (IDF) – Effective 1 July 2023

The Act has reduced the IDF rate to 2.5 percent from the previous 3.5 percent.

**Comment:** This change will stimulate growth in the domestic manufacturing sector due to affordability of imported materials.

### Reduction of Railway Development Levy – Effective 1 July 2023

The Act has reduced the RDL rate from 2 percent to 1.5 percent.

**Comment:** This change will stimulate growth in the domestic manufacturing sector due by reducing the cost of transporting materials

The Act also exempts the following from IDF and RDL:

- Goods imported for official use by international and regional organizations
- Goods under Chapter 88 (aircraft, spacecraft, and parts)
- Liquefied petroleum gas

**Comment:** This change will boost international and regional trade, facilitate import processes, and also lower the cost of production for the local manufacturers using liquefied gas.



The following tables highlight the changes in export levy rates for various Tariff Numbers in the Finance Act 2023:

| Tariff Description   | Old Export levy rate    | New Export Levy Rate                |
|--|-------------------------|-------------------------------------|
| Iron ores and concentrates, including roasted iron pyrites, Whole hides and skins, of a weight per skin not exceeding 8 kg. when simply dried, 10 kg. when dry salted, or 16 kg. when fresh, wet salted or otherwise preserved.                      | 80% or USD 0.52 per kg  | 50% or USD 0.32 whichever is higher |
| Raw skins of sheep or lambs (pickled, but not tanned, parchment-dressed or further prepared), without wool on whether or not split, other than those excluded by Note 1(c) to Chapter 41.  | 80% or USD 0.52 per kg. | 50% or USD 0.32 whichever is higher |
| Whole unsplit hides and skins, of a weight per skin not exceeding 8kg when simply dried, 10kg when dry salted, or 16kg when fresh, wet salted or otherwise preserved: Tariff 4101.20.00  | 80% or USD 0.52 per kg  | 50% or USD 0.32 whichever is higher |
| Other raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), without wool on, whether or not split, other than those excluded by Note (c) to Chapter 41 | 80% or USD 0.52 per kg. | 50% or USD 0.32 whichever is higher |

| Tariff Description  | Current Export levy rate | New Export Levy Rate                |
|---|--------------------------|-------------------------------------|
| Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or (c) to this Chapter, of reptiles. | 80% or USD 0.52 per kg.  | 50% or USD 0.32 whichever is higher |
| Other raw hides and skins other than of reptiles, swine, goats or kids.   | 80% or USD 0.52 per kg.  | 50% or USD 0.32 whichever is higher |
| Other tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared, in the wet state (including wet - blue).  | 80% or USD 0.52 per kg.  | 50% or USD 0.32 whichever is higher |
| Raw fur skins of fox, whole, with or without head, tail or paws.  | 80% or USD 0.52 per kg.  | Deleted                             |

| Tariff Description  | Current Export levy rate | New Export Levy Rate                |
|---|--------------------------|-------------------------------------|
| Whole hides and skins, of weight exceeding 16 kg.   | 80% or USD 0.52 per kg.  | 50% or USD 0.32 whichever is higher |
| Other, including butts, bends and bellies.  | 80% or USD 0.52 per kg.  | 50% or USD 0.32 whichever is higher |
| Raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1(c) to Chapter 41. | 80% or USD 0.52 per kg.  | 50% or USD 0.32 whichever is higher |

| Tariff Description   | Current Export levy rate | New Export Levy Rate                |
|--|--------------------------|-------------------------------------|
| Raw fur skins of mink, whole, with or without head, tail or paws.            | 80% or USD 0.52 per kg   | 50% or USD 0.32 whichever is higher |
| Other raw fur skins, whole, with or without head, tail or paws.              | 80% or USD 0.52 per kg   | 50% or USD 0.32 whichever is higher |
| Heads, tail, paws, and other pieces or cuttings, suitable for furriers' use. | 80% or USD 0.52 per kg   | 50% or USD 0.32 whichever is higher |
| Whole skins, with or without head, tail or paws, not assembled, of mink.     | 80% or USD 0.52 per kg   | 50% or USD 0.32 whichever is higher |

| Tariff Description  | Current Export levy rate | New Export Levy Rate                |
|---|--------------------------|-------------------------------------|
| Whole skins, with or without head, tail or paws, not assembled, of mink.  | 80% or USD 0.52 per kg.  | 50% or USD 0.32 whichever is higher |
| Heads, tails, paws and other pieces or cuttings, not assembled.   | 80% or USD 0.52 per kg   | 50% or USD 0.32 whichever is higher |
| Tin waste and scrap. (8002.00.00-New Tariff No.)  | 20%                      | 20%                                 |
| Bismuth and articles thereof including waste and scrap.   | 20%                      | N/A                                 |
| Waste and scrap of cadmium. (8112.61.00-New Tariff No.  | 20%                      | 20%                                 |
| Waste and scrap of zirconium.   | 20%                      | N/A                                 |
| Waste and scrap of antimony. (8110.20.00-New Tariff No)   | 20%                      | 20%                                 |
| Bismuth and articles thereof including waste and scrap containing more than 99.99 percent of bismuth, by weight | N/A                      | Export Levy Rate-20%                |

|   |                        |         |
|---|------------------------|---------|
| Hides and skins of equine animals of tariff 4101 .40.00 | 80% or USD 0.52 per kg | Deleted |
|---|------------------------|---------|

| Tariff Description   | Current Export levy rate | New Export Levy Rate     |
|--|--------------------------|--------------------------|
| Other bismuth and articles thereof including waste and scrap   | N/A                      | 20%                      |
| Cobalt mattes and other intermediate products of cobalt metallurgy; cobalt and articles thereof, including waste and scrap | N/A                      | 20%                      |
| Waste and scrap of zirconium containing less than 1 part hafnium to 500 parts zirconium by weight                          | N/A                      | 20%                      |
| Molasses resulting from the extraction or refining of sugar  | N/A                      | 20% of the customs value |

| Tariff No. | Tariff Description   | Current Export levy rate | New Export Levy Rate       |
|------------|--|--------------------------|----------------------------|
| 2523.10.00 | Cement Clinkers  | N/A                      | 17.5% of the customs value |
| 7207.11.00 | Semi-finished products of iron or non-alloy steel containing, by weight, <0.25 percent of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness | N/A                      | 17.5% of the customs value |
| 7213.91.10 | Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross section measuring less than 8 mm            | N/A                      | 17.5% of the customs value |
| 7213.91.90 | Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter; other   | N/A                      | 17.5% of the customs value |

| Tariff No. | Tariff Description   | Current Export levy rate | New Export Levy Rate     |
|------------|--|--------------------------|--------------------------|
| 4804.11.00 | Uncoated kraft paper and paperboard, in rolls or sheets; Kraft liner; Unbleached | N/A                      | 10% of the customs value |
| 4804.21.00 | Sack kraft paper; Unbleached   | N/A                      | 10% of the customs value |

|            |  |     |                          |
|------------|--|-----|--------------------------|
| 4804.31.00 | Other kraft paper and paperboard weighing 150 g/m <sup>2</sup> or less: Unbleached | N/A | 10% of the customs value |
| 4819.30.00 | Sacks and bags, having a base of a width of 40 cm or more                          | N/A | 10% of the customs value |
| 4819.40.00 | Other sacks and bags, including cones  | N/A | 10% of the customs value |

| Tariff | Description | Old rate | New rate |
|--------|-------------|----------|----------|
|--------|-------------|----------|----------|

#### Export levy changes

|      |   |                       |         |
|------|---|-----------------------|---------|
| 2601 | Iron ores and concentrates, including roasted iron pyrites  | Exempt                | USD 175 |
|      | Currency notes and coins entered for home use from an EPZ enterprise by the Central Bank of Kenya | 2.5% of Customs value | Exempt  |

#### Exemption from Import Declaration Fee

|   |   |        |
|---|---|--------|
| All goods including material supplies equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service  | - | Exempt |
| Goods, inputs and raw materials imported by a company which is<br>- engaged in business under a special operating framework arrangement with the Government; and<br>- incorporated for purposes of undertaking the manufacture of human vaccines or other manufacturing activities including refining; and whose capital investment is at least Kes. 10 billion,<br>subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health | - | Exempt |
| All goods and parts thereof of Chapter 88 (Aircrafts)   | - | Exempt |
| Any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation   | - | Exempt |
| Goods for official use by diplomatic and consular missions, the United Nations and its agencies, and institutions or organizations exempted under the Privileges and Immunities Act   | - | Exempt |

|   |   |        |
|---|---|--------|
| Goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya |   | Exempt |
| The supply of denatured ethanol of tariff number 2207.20.00   | - | Exempt |
| Bioethanol vapour (BEV) stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel.             | - | Exempt |
| Liquified petroleum gas   | - | Exempt |

## Exemption from Railway Development Levy

|   |   |        |
|---|---|--------|
| Goods imported for official use by diplomatic and consular missions, United Nations and its agencies, and institutions or organizations exempted under the Privileges and Immunities Act  | - | Exempt |
| All goods including material supplies equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service  | - | Exempt |
| Goods, inputs and raw materials imported by a company which is<br>- engaged in business under a special operating framework arrangement with the Government; and<br>- incorporated for purposes of undertaking the manufacture of human vaccines or other manufacturing activities including refining; and whose capital investment is at least Kes. 10 billion,<br>subject to approval of the Cabinet Secretary for National Treasury, on recommendation of the Cabinet Secretary for Health | - | Exempt |
| Goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya   | - | Exempt |
| All goods and parts thereof of Chapter 88 (Aircrafts)   | - | Exempt |
| The supply of denatured ethanol of tariff number 2207.20.00   | - | Exempt |
| Bioethanol vapour (BEV) stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel.   | - | Exempt |

|   |   |        |
|---|---|--------|
| Any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation | - | Exempt |
| Liquefied petroleum gas   | - | Exempt |

## → Appendix

### VAT Changes

| Item   | Old Rate | New Rate   |
|--|----------|------------|
| Liquified Petroleum Gas (LPG)  | 8%       | Zero rated |
| Petroleum Products (including Propane and excluding LPG)   | 8%       | 16%        |
| Exported taxable Services  | 16%      | Zero-rated |
| Aircraft parts of heading 8803, excluding parts of goods of heading 8801 from paragraph 49   | 16%      | Exempt     |
| All tea and coffee locally purchased for the purpose of value addition before exportation subject to approval by the Commissioner-General.   | 16%      | Zero rated |
| The supply of electric bicycles  | 16%      | Zero rated |
| The supply of solar and lithium ion batteries  | 16%      | Zero rated |
| Inputs or raw materials locally purchased or imported for the manufacture of animal feeds  | 16%      | Zero rated |
| The supply of electric buses tariff heading 87.02  | 16%      | Zero rated |
| Bioethanol vapour (BEV) Stoves classified under HS Code 7321.12.00 (cooking appliances and plate warmers for liquid fuel).   | 16%      | Zero Rated |
| Supply of motorcycles of tariff heading 8711.60.00   | 16%      | Zero rated |
| Taxable services locally purchased by a company which is engaged in business under a special operating framework arrangement with the Government; and is incorporated for purposes of undertaking the manufacture of human vaccines or other manufacturing activities including refining; and whose capital investment is at least ten billion shillings |          | Exempt     |
| The supply of locally assembled and manufactured mobile phones   | 16%      | Zero rated |
| Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty beds, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption.                       |          | Exempt     |

|   |        |            |
|---|--------|------------|
| Inbound international sea freight offered by a registered person  | 16%    | Zero rated |
| Inputs or raw materials locally purchased or imported by manufacturers of clean cook stoves paragraph 66A.  | Exempt | 16%        |
| Taxable goods, inputs and raw materials imported or locally purchased by a company which - (a) is engaged in business under a special operating framework arrangement with the Government; and (b) is incorporated for purposes of undertaking the manufacture of human vaccines or other manufacturing activities including refining; and whose capital investment is at least ten billion shillings, subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health. | 16%    | Exempt     |
| Taxable supplies made to or by a school feeding programme recognized by the Cabinet Secretary responsible for matters relating to education   | 16%    | Exempt     |
| Fetal Doppler-Pocket (Wgd-002) Pc and pulse oximeter-finger held (Gima brand) Pc of tariff number 9018.19.00  | Exempt | 16%        |
| The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight. Provided this paragraph shall be in operation for a period of six months from the date of assent  | Exempt | 16%        |
| Other artificial parts of the body deleted from tariff number.9021.50.00.   | Exempt | 16%        |

## Harmonization of HS CODES with VAT Act

| Current description   | New Description  |
|---|--|
| Other medicaments, containing hormones or other products of heading No. 29.37 but not containing antibiotics, not put up in measured doses or in forms or packings for retail sale. | Other medicaments, containing hormones or other products of heading No. 29.37 not put up in measured doses or in forms or packings for retail sale.  |
| Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale  | Other Medicaments containing antibiotics, put up in measured doses or in forms or packings for retail sale   |
| Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale.   | Other, Medicaments containing hormones or other products of heading 29.37 containing corticosteroid hormones, their derivatives or structural analogue of tariff   |
| Chemical contraceptive preparations based on hormones or spermicides.   | Chemical contraceptive preparations based on hormones or on other products of heading 29.37 or spermicides.  |
| Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, 9018.20.00, 9018.90.00 upon approval by health CS                       | Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, other instruments and appliances of tariff numbers 9018.20.00, 9018.90.00 upon approval by health CS |
| Other instruments and appliances, including surgical blades, of tariff number 9018.49.00,   | Other instruments and appliances used in dental sciences of tariff 9018.49.00, other ophthalmic  |

|  |  |
|--|--|
| 9018.50.00, 9018.90.00 used in dental sciences upon approval by health CS  | instruments and appliances of tariff 9018.50.00 and other instruments and appliances of tariff number 9018.90.00 approval by the CS health   |
| Artificial teeth and dental fittings of tariff numbers 9021.21.00, 9021.29.00 and artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health | Artificial teeth of tariff number 9021.21.00, other dental fittings of tariff number 9021.29.00 and other artificial parts of the body of tariff numbers 9021.31.00 and 9021.39.00 and other appliances of tariff number 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health. |
| artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00   | artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.90.00  |

| Description   | Old H.S Code | New H.S Code                        |
|---|--------------|-------------------------------------|
| Diagnostic or laboratory reagents, of tariff number 3822.00.00 on a backing, prepared diagnostic, or laboratory reagent whether or not on a backing, other than those of heading 30.02 or 30.06, certified reference materials upon approval by the Cabinet Secretary responsible for matters relating to health  | 3822.00.00   | 3822                                |
| Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, of tariff number 85.23. including matrices and masters for the production of discs, but excluding products of Chapter 37; software upon approval by the Cabinet Secretary responsible for matters relating to health | 8523.80.10   | 85.23(All items under this heading) |
| Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.31.00, including weight operated counting or checking machines; weighing machine weights of all kinds   | 8423.31.00   | 8423.10.00                          |

| Tariff number in VAT                     | Tariff Description  |
|--|---|
| 3005.90.11,<br>3005.90.12'<br>3005.90.19 | White absorbent cotton wadding, impregnated or coated with pharmaceutical substances, or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes |



Harmonization of HS CODES with VAT Act

| Current description  | New Description  |
|--|--|
| Other medicaments, containing hormones or other products of heading No. 29.37 but not containing antibiotics, not put up in measured doses or in forms or packings for retail sale.  | Other medicaments, containing hormones or other products of heading No. 29.37 not put up in measured doses or in forms or packings for retail sale.  |
| Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale   | Other Medicaments containing antibiotics, put up in measured doses or in forms or packings for retail sale   |
| Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale.  | Other, Medicaments containing hormones or other products of heading 29.37 containing corticosteroid hormones, their derivatives or structural analogue of tariff   |
| Chemical contraceptive preparations based on hormones or spermicides.  | Chemical contraceptive preparations based on hormones or on other products of heading 29.37 or spermicides.  |
| Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, 9018.20.00, 9018.90.00 upon approval by health CS  | Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, other instruments and appliances of tariff numbers 9018.20.00, 9018.90.00 upon approval by health CS   |
| Other instruments and appliances, including surgical blades, of tariff number 9018.49.00, 9018.50.00, 9018.90.00 used in dental sciences upon approval by health CS  | Other instruments and appliances used in dental sciences of tariff 9018.49.00, other ophthalmic instruments and appliances of tariff 9018.50.00 and other instruments and appliances of tariff number 9018.90.00 approval by the CS health   |
| Artificial teeth and dental fittings of tariff numbers 9021.21.00, 9021.29.00 and artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health | Artificial teeth of tariff number 9021.21.00, other dental fittings of tariff number 9021.29.00 and other artificial parts of the body of tariff numbers 9021.31.00 and 9021.39.00 and other appliances of tariff number 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health. |
| artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00   | artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.90.00  |

| Description  | Old H.S Code | New H.S Code                        |
|--|--------------|-------------------------------------|
| Diagnostic or laboratory reagents, of tariff number 3822.00.00 on a backing, prepared diagnostic, or laboratory reagent whether or not on a backing, other than those of heading 30.02 or 30.06, certified reference materials upon approval by the Cabinet Secretary responsible for matters relating to health | 3822.00.00   | 3822                                |
| Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, of tariff number 85.23. including matrices and masters for the production of discs, but excluding products of Chapter 37;                       | 8523.80.10   | 85.23(All items under this heading) |

|   |            |            |
|---|------------|------------|
| software upon approval by the Cabinet Secretary responsible for matters relating to health  |            |            |
| Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.31.00, including weight operated counting or checking machines; weighing machine weights of all kinds | 8423.31.00 | 8423.10.00 |

| Tariff number in VAT | Tariff Description   |
|----------------------|--|
| 3002.19.00           | Other-Antisera, Other blood fractions and immunological products, whether or not modified or not modified or obtained by B1 means of biotechnological processes  |
| 3003.90.90           | Other medicaments (excluding goods of heading No.30.02,30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured dose or in forms or packings for retail sale |

## Contacts for further information

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This is a general guideline tax and legal alert and should not be a substitute for proper advice. For queries and clarification, kindly get in touch with Rödl & Partner.

## Imprint

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