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Kenya: The Finance Bill 2024

13 May 2024

The Finance Bill 2024 (the **Bill**) was introduced to the National Assembly on 9th May 2024. Further to our earlier analysis, we have reviewed the current version of the Bill and set out below the key proposed changes.

(a) the Income Tax Act

- **Motor vehicle tax** – the Bill proposes to introduce a tax known as motor vehicle tax at the rate of two-point five per cent (2.5%) of the value of the motor vehicle. This tax will be payable at the time of issuance of insurance cover for motor vehicles;
- **Withholding tax on goods supplied to public entities** – the Bill proposes to introduce withholding tax on goods supplied to public entities by both resident persons and non-resident persons without a permanent establishment. The applicable withholding tax rate shall be three per cent (3%) of the amount paid if the payment is to a resident person and five per cent (5%) if the payment is to a non-resident person;
- **Taxation of income from operation of digital marketplace or platform and digital content monetization** – the Bill proposes to tax the income of a resident or non-resident person who owns or operates a digital marketplace or platform, makes or facilitates payment in respect of digital content monetization, goods, property or services. The tax will apply at the rate of twenty per cent (20%) for non-residents and five per cent (5%) for residents;
- **Repeal of provisions on Digital Service Tax and introduction of Significant Economic Presence Tax** – the Bill proposes to repeal the provisions on digital service tax (**DST**) and introduce a tax known as significant economic presence tax at the rate of 30% of the deemed taxable profit. The tax will be payable by a non-resident person whose income from the provision of services is derived from or accrued in Kenya through a business

carried on over a digital marketplace;

- **Minimum top-up tax on certain resident entities that are members of multinational groups** – the Bill seeks to introduce a minimum top-up tax which will be payable by a covered person where the combined effective tax rate in respect of that person for a year of income is less than fifteen per cent (15%). A covered person is defined as a resident person with a permanent establishment in Kenya who is a member of a multinational group with a consolidated turnover of seven hundred and fifty million Euros (EUR 750,000,000) or more in the consolidated financial statements of the ultimate parent entity in at least two of the four years of income immediately preceding the tested year of income;
- **Contributions to certain medical funds and the affordable housing levy to be tax deductible expenses** – the Bill proposes to make contributions to the Social Health Insurance Fund, post-retirement medical fund and the affordable housing levy deductible expenses in computing the taxable income of a contributor;
- **Investment deduction on capital expenditure incurred on the purchase of spectrum licence** – the Bill proposes to introduce an investment deduction claim on capital expenditure incurred on the purchase of spectrum licence by a telecommunication operator at the rate of ten per cent (10%) in equal instalments. For spectrum license purchased before 01 July 2024, the deduction shall be restricted to the unamortized portion over the remaining useful life of a spectrum licence;
- **Interest income earned by resident persons from infrastructure bonds to be taxable** – the Bill proposes to subject to income tax the interest income earned by resident persons from infrastructure bonds. Such interest income earned by non-resident persons will however continue to be exempt from income tax. In addition, all the interest income earned from infrastructure bonds already listed prior to the coming into force of the proposal shall continue to be exempt from tax; and
- **Taxation of family trusts** – the Bill proposes to subject the income of a registered family trust to tax.

(b) the Value-Added Tax Act

- **Application of VAT on certain financial services** – the Bill proposes to delete VAT exemptions for the following financial services, which would subsequently be chargeable to VAT at the standard rate, currently at sixteen per cent (16%):
  - issuing of credit and debit cards;
  - telegraphic money transfer services;
  - foreign exchange transactions, including the supply of foreign drafts and international money orders;
  - cheque handling, processing, clearing and settlement including special clearance or cancellation of cheques;
  - issuance of securities for money, including bills of exchange, promissory notes, money and postal orders;
  - the assignment of a debt for consideration; and
  - the provision of financial services on behalf of another on a commission basis.
- **Increase of VAT registration threshold** – the Bill proposes to increase the threshold for

mandatory VAT registration from Kenya Shillings five million (KES 5,000,000) to Kenya Shillings eight million (KES 8,000,000);

- **Exemption of transfer of business as a going concern from VAT** – the Bill proposes to make the transfer of business as a going concern exempt from VAT. Currently, VAT is applicable on such transfers at the standard rate of sixteen per cent (16%);
- **Exemption of insurance and reinsurance premiums from VAT** – the Bill proposes to limit the VAT exemption on insurance and reinsurance services to insurance and reinsurance premiums. As such, the rest of insurance and reinsurance services would be subject to VAT at the standard rate, currently, sixteen per cent (16%);
- **Application of VAT on betting, gaming and lotteries services** – the Bill proposes to delete the VAT exemption for betting, gaming and lotteries services. These services would be subject to VAT at the standard rate, currently at sixteen per cent (16%);
- **Scrapping of certain VAT exemptions in the tourism sector** – the Bill proposes to delete the following VAT exemptions that had been introduced in the tourism sector:
    - taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks;
    - specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion; and
    - taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, and convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.
- **Scrapping of certain VAT exemptions in the manufacturing and construction sectors –** the Bill proposes to delete the following VAT exemptions for the manufacturing and the construction sectors:
    - such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector provided that the value of such investment is not less than two billion shillings;
    - plant, machinery and equipment used in the construction of a plastics recycling plant;
    - taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption; and
    - taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon recommendation by the Cabinet Secretary responsible for health.

(c) the Excise Duty Act

- **Introduction of Excise Duty on services offered in Kenya by a non-resident through a digital platform** – the Bill proposes to introduce excise duty on excisable services offered

in Kenya by a non-resident through a digital platform. The proposed Excise Duty rate is 20% and would apply to the following services:
    - telephone and internet data services;
    - fees charged for money transfer services by banks, money transfer agencies, and other financial service providers;
    - betting, lottery, gaming and prize competition; and
    - fees on digital lending.
- **Increase of Excise Duty on money transfer services** – the Bill proposes to increase excise duty from fifteen per cent (15%) to twenty per cent (20%) on fees charged for money transfer services offered by (a) banks, money transfer agencies and other financial service providers and (b)cellular phone service providers or payment service providers licensed under the National Payment Systems Act, 2011;
- **Extension of timeline for payment of excise duty by licensed manufacturers of alcoholic beverages** – the Bill proposes to extend the timeline for payment of excise duty by licensed manufacturers of alcoholic beverages to five (5) working days upon removal of goods from the stockroom. The Finance Bill, 2023 required licensed manufacturers of alcoholic beverages to pay excise duty within twenty-four (24) hours upon removal of the goods from the stockroom;
- **Repeal of provisions on automatic adjustment for inflation of excise duty rate** – the Bill proposes to delete the provisions on automatic adjustment for inflation of excise duty rates on excisable goods; and
- **Alignment of tariff classification of goods under the Excise Duty Act to the East African Customs Union Protocol** – the Bill proposes to introduce a provision referencing the tariff codes used in Annex 1 of the Protocol on the Establishment of the East African Customs Union for purposes of classifying goods in the Excise Duty Act.

(d) the Tax Procedures Act

- **Increase of timeframe for issuance of objection decisions by the KRA** – the Bill proposes to increase the timeframe for issue of objection decisions by the KRA from 60 days to 90 days;
- **Relief because of doubt or difficulty in recovery of tax** -the Bill proposes to confer the KRA with the powers to refrain from assessing or recovering an unpaid tax, with the prior written approval of the Cabinet Secretary, if it is determined that under certain circumstances including impossibility to recover an unpaid tax and undue difficulty or expense in the recovery of an unpaid tax among others.
- **Weekends and public holidays to be excluded when determining statutory timelines under tax laws** – the Bill proposes to change the manner in which time is computed under tax laws for purposes of among others lodging of tax returns, payment of taxes and submission of documents by excluding weekends and public holidays. This means that under tax laws, the computation of time will be based on business days instead of calendar days; and
- **KRA empowered to direct taxpayers to integrate their systems with the KRA's system** – the Bill proposes to empower the KRA to issue a notice requiring a person to integrate his/her system with the KRA's system to enable the real-time submission of documents to the

KRA.

(e) the Miscellaneous Fees and Levies Act

- **Reduction of the rate of Export and Investment Promotion Levy** – the Bill proposes to reduce the rate of Export and Investment Promotion Levy on various items from a high of 17.5% on the customs value to a maximum of 2% of the customs value. However, despite the proposed reduced rate of the levy, the proposed list of items on which the levy is applicable has been increased to include items such as vodka, cooking stoves, milk and cream of a fat content by weight exceeding 1% but not exceeding 6%.

Our detailed analysis of the Finance Bill 2024 is contained here.

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