Ronalds

The Finance Bill, 2023

Introduction

The Public Finance Management Act requires the Cabinet Secretary of NationalTreasury and Planning to table the Finance Bill before the national assembly by 30th April. However, this was not the case, as the first reading of the Finance Bill, 2023 to the National Assembly was on 4th May, 2023.

This Finance Bill comes with a raft of proposed amendments to the existing tax laws such as the Income Tax Act, Value Added Act, Tax procedures Act while proposing new taxes, regulations and incentives.

Below is our analysis of these changes proposed in the Finance Bill, 2023, herein referred to as ‘The Bill’.

Income Tax Proposals

Redefinition of Winnings

The Bill proposes a new meaning to winnings as the payout from betting, gaming, lottery, price competition, gambling or similar transactions under the Betting, Lotteries & Gaming Act without deducting the amount staked.

The Bill is bringing clarity to what includes winnings, as currently, these include winnings of any kind.

New Interpretations

i) Digital content monetisation

The Bill proposes to define “ digital content monetization” to mean offering for payment entertainment, social, literal, artistic, educational or any material electronically through a medium or channel in any forms including: advertisement on websites, social media platforms, sponsorship, affiliate marketing, subscription services, merchandise sales, membership programs, licensing content and crowdfunding for raising funds services

New Interpretations

ii) Immovable Property

The Bill proposes to redefine immovable property to include;

a) Land

b) Mining rights, an interest in a petroleum agreement, mining information or petroleum information;

Through these new definitions, The Bill intends to bring clarity through their interpretation. As a result, the Bill will be expanding the tax base by bringing many transactions under the taxing net.

Deductibility of Foreign Exchange Loss

The Bill proposes that foreign exchange loss shall be deferred and claimed over a period of not more than three years from the date the loss was realized by a company for a company whose gross interest paid to non resident persons exceeds 30% of the company’s EBITDA.

The Bill proposes to restrict claiming of foreign exchange loss for companies that are thinly capitalized

Standardization of Mileage Rates

The Bill proposes where an amount is received by an employee as payment for traveling allowance to perform official duties,the standard mileage rate approved by automobile association of Kenya shall be deemed to be reimbursement of the amount so expended and shall be excluded in calculation of employees gain in profits.

The Bill intends to bring uniformity by introducing the standard mileage rate approved by the automobile association of Kenya.

Club Entrance and Subscription Fees

The Bill proposes to introduce club entrance and subscription fees disallowed against the employer’s income as gains from employment.

This will increase the tax burden of the employer on contributions made on behalf of the employees and directors on club entrance and subscriptions.

Repatriation of Income

The Bill introduces Section 7B which intends to charge tax on repatriated income by non-residents. The repatriated income shall be determined by the formula below:

$R = A1 + (P - T) - A2$

R: is the repatriated profit;

A1: is the net assets at the beginning of the year

P: is the net profit for the year of income calculated in accordance with generally accepted accounting principles

T: is the tax payable on the chargeable income;

A2: is the net assets at the end of the year.

The proposal intends to streamline the Kenyan Tax framework with the global tax practices. Currently, in East Africa, Tanzania and Uganda charge a 10% and 15% tax on repatriated profits.

In the long run, this proposal shall increase the revenues collected by the taxman. However, the Bill does not explicitly state the tax rate subjected to the repatriated profits.

Restriction of deductible withholding tax on management of professional fees,royalties,interest and rents.

The Bill proposes Withholding tax paid shall not be refundable or available for deduction against income where an audit adjustment has been made in respect of such payment.

This move aims to restrict withholding tax deductions on payments made to non-residents to achieve compliance and in the long run increase revenue collection.

Turnover Tax (TOT)

Turnover Tax at 3%
The Bill proposes to increase the rate of turnover tax to 3%. Currently, turnover tax is charged at the rate of 1%.

This Bill comes barely 3 years after the Turnover Tax rate was reduced from 3% to 1%.

Threshold (Kes 500,000 - 15M)
The Bill proposes to limit the turnover threshold of businesses that are subject to Turnover Tax to more than Kes 500,000 and does not exceed Kes 15 Million. Currently, the turnover threshold is over Kes 1million and does not exceed Kes 50 Million.

From the above proposals, increasing the Turnover Tax from 1% to 3% indicates the urge of the government to increase its collections and meet the revenue targets. However, this will be detrimental to MSMEs which are the backbone source of income and employment to many low income earners.

Coming at a time that the country is grappling with slow post Covid-19 pandemic recovery of the economy, this is a retrogressive proposal which will have many macro businesses being brought to a taxing net. Similarly, the SMEs with over Kes 15 Million in turnover switching to the regime of a 30% standard corporate tax rate.

Digital Asset Tax

The Bill defines “Digital asset” to mean anything of value that is not tangible and cryptocurrencies,token code,number held in digital form and generated through cryptographic means and non -fungible token or any other token of similar nature.

The Bill proposes to introduce digital asset tax on income derived from transfer or exchange of digital assets at the rate of 3% of the transfer or the exchange value.

This tax shall be payable by the owner of the platform or the person facilitating the exchange or transfer of a digital asset.

Through this proposal, the governmenting will be leaving no stone unturned by tapping into the digital assets industry that has experienced tremendous growth over time.

The proposal will widen the tax base by bringing to tax net the digital asset and an additional obligation of filing to the owners of the platforms or the persons facilitating the transfer of the digital asset.

Deductions not Allowed

The Bill proposes to disallow invoices that are not generated through the electronic tax invoice management system.

The proposal intends to increase taxpayers’ compliance with electronic tax invoice management system thus increasing revenues collected by the tax authority

Filing of Country by Country Report

Ultimate Parent Entity
The Bill proposes that each ultimate parent entity that is resident in Kenya shall be required to file a country by country report with the Commissioner.

Currently, there is a threshold of gross turnover of 95 Billion shillings for an ultimate parent entity of a multinational group that is resident in Kenya to file a country by country report with the Commissioner.

The Bill also redefines the Ultimate Parent entity as an entity which;

- Is not controlled by another entity
- Owns or controls, directly or indirectly, one or more constituent entities of a multinational enterprise group.

Constituent entity
The Bill proposes to introduce the filing of a country by country report with the Commissioner to a constituent entity that is resident in Kenya. This is on the condition that;

- The ultimate parent entity is not obliged to file a country by country report in the country that it resides;
- The country where the Ultimate Parent Entity is resident has an international tax agreement but does not have a competent authority agreement with Kenya at the time of filing the country by country report in that particular reporting financial year.
- There is a systemic failure of the country of tax residence of the Ultimate Parent Entity that has been notified by theCommissioner to the constituent entity in Kenya.

This proposition intends to streamline the Kenyan Tax Framework with the OECD guidelines (BEPS Action 13). As a result, it will be the obligation of both each ultimate parent entity and a constituent entity resident in Kenya to file a country by country report with the Commissioner. This will enhance country by country reporting compliance and transparency of these multinational enterprise groups' activities to the Commissioner.

Post - retirement medical fund relief

The Bill proposes that a resident individual who contributed to a post-retirement medical fund in any year of income is entitled to a post-retirement medical fund relief of 15% or Kes 60,000 pa, whichever is lower.

This relief will be a welcome move to the individuals that are making contributions to a registered post retirement scheme as they will have a higher take home. In addition, this will encourage more personnel to make contributions towards post-retirement medical funds.

Withholding Tax on Sales promotion, Marketing and Advertising Services

The Bill proposes to introduce withholding tax on payments made with regards to sales promotions, marketing and advertising services at the rate of 5% on gross amounts exceeding Kes 24,000.

Currently, sales promotions, marketing and advertising services are not taxable locally, except for non-residents which are subject to withholding tax at the rate of 20%.

Introduction of withholding tax on payments made to residents on sales promotion, marketing and advertising services is intended to increase the taxbase, in the long run increasing the tax revenues.

In the long run, this is a retrogressive move that will increase the cost of sales and advertisements for local businesses.

Withholding Tax on Digital Content Monetization

The Bill proposes to introduce withholding tax payments made with regards to digital content monetization in Kenya at the rate of 15%.

This Bill indicates the government's intentions to tap into the digital market, which has not been exploited previously. This a move that will increase the revenues to be collected by the Kenya Revenue Authority. Given the digitization of business across many sectors, this is expected to increase the cost of doing business on digital content that is monetized with an added obligation of complying with the withholding tax provisions.

Rental Income Tax

The Bill proposes to reduce the residential rental income tax from 10% to 7.5% on the gross rental receipts.

This proposal of reducing the residential rental income tax to 7.5% indicates how committed the new government is on the affordable housing agenda. This implies that the owners of residential premises shall have a higher home take. As a result, this will spur more development of houses by investors, reduced house rent that is affordable to the residents and thus support the government in addressing the affordable housing for its citizens.

The Bill also proposes to empower the Commissioner to appoint in writing a person who receives rental income on behalf of the owner of the premises to deduct and remit to the Commissioner the rental income tax within 24 hours after the deduction.

Given that this is a largely adopted model of using agents to manage and collect rental income, this proposition to empower the Commissioner to appoint these agents to withhold and remit rental tax will increase compliance among the owners of these rental premises.

In the long run, this will increase the tax revenues collected by the Commissioner. In addition, these agents will have an added tax obligation of deducting and remitting tax to the Commissioner.

Manufacturers of human vaccines

The Bill proposes to introduce a 10% corporate income tax rate to manufacturers of human vaccine.
In addition, the Bill proposes to exempt the following specific payments from charge of 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 the manufacturer of human vaccines.

This proposition of introducing a 10% corporate income tax to manufacturers of human vaccines comes barely a year after these entities were exempted from payment of income tax by the Finance Act, 2022. While the rate is lower than other businesses, this is a retrogressive move for potential investors who had their plans based on the income tax exemption.

The propositions to extend the exemption incentives available to manufacturers of human vaccines to other payments on royalties and interest are welcomed. Since the emergence of COVID-19 pandemic, the government has provided these incentives as a way to attract investors in manufacture of human vaccines as a preventive measure of handling diseases that may emerge in Kenya.

Given the challenge experienced in Kenya and at a global level in combating the pandemic, it will be commendable if these manufacturers of human vaccines remain tax exempt entities.

Investment Allowance

The Bill proposes to introduce investment allowance on the following items

Item	Rate
Industrial Building	10%
Dock	10% in equal installments

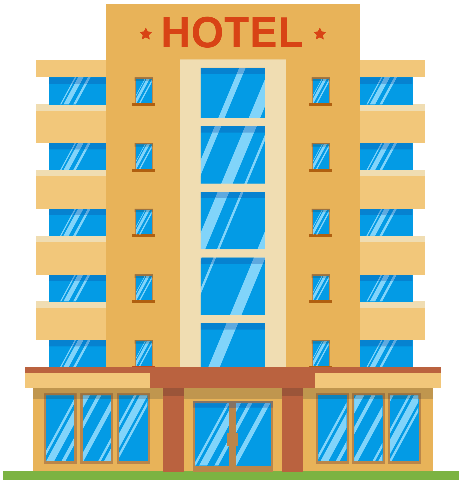
The Bill defines
- Dock to include a container terminal berth, harbor, wharf, pier, jetty, storage yard, or other works in or at which vessels load or unload merchandise but does not include a pier or jetty used for recreation;
- Industrial building to include a building in use for the purpose of transport, bridge, tunnel, inland navigation water and electricity or hydraulic power undertaking

This is a welcome move, following the overhaul of the Second Schedule by the Tax Laws (Amendment) Act, 2020, this Bill intends to reintroduce a deduction on Industrial building which will encourage further investments within the country.

In addition, an investment allowance on docks will encourage more investment across the terminals and harbors in the country.

100% Investment Deduction on Hotel Buildings

The Bill proposes to introduce 100% investment allowance on hotel buildings.



100% Investment Deduction on Buildings and Machinery Used for Manufacture

Currently, buildings used for manufacture includes any structure or civil works deemed to be part of a building where the structure or civil works relates or contributes to the use of the building.
Machinery used for manufacture includes machinery used directly in the process of manufacture, and includes machinery used for the following ancillary purposes;

- Generation, transformation and distribution of electricity;
- Clean-up and disposal f effluents and other waste products;
- Reduction of environmental damage;
- Water supply or disposal;
- Maintenance of the machinery;or
- Scientific research and development.

This is a welcome move that will encourage investment and boost the hotel and hospitality industry in the country. In addition, the investment allowance on machinery and buildings for manufacture shall encourage more investments in the country.

However, the Bill proposes to limit this deduction, in that it shall not apply to investments which, due to the nature of their business, have to be established outside Nairobi City Country and Mombasa County. However, this will require more guidelines in determining the businesses that are located outside Nairobi City County and Mombasa County based on their investment and their relative nature of operations.

Advance Tax

The Bill proposes to double the advance tax for vans, pick-ups, trucks, prime movers, trailers and lorries to Kes 3,000 per tonne,from Kes 1,500 per tonne or Kes 2,400 per year to Kes 5,000 per year, whichever is higher.

For salons, station wagons, minibusses, buses, coaches, the advance tax will be increased from Kes 60 to Kes 100 per passenger capacity or Kes 5,000 from Kes 2,400 per year, which server is higher.

This will increase the cost of operating these commercial & passenger vehicles through the increased charge of advance tax.

New PAYE Tax Band

The Bill proposes the following new tax band on PAYE for individuals;

Amount	**Rate in each shilling**
On the first K Sh.288,000	10%
On the next Ksh 100,000	25%
On all income over Ksh 5,612,000	30%
On all income over Ksh 6,000,000	35%

The current PAYE tax band is as shown below;

Amount	Rate in each shilling
On the first K Sh.288,000	10%
On the next Ksh 100,000	25%
On all income over Ksh. 388,000	30%

This Bill intends to align the taxation of individual incomes with the Principle of Tax Fairness and Equality.
In the long-run, this is expected to boost the tax revenues collected by the government and thus improve on services offered to the community.

30% Corporate Income Tax for Non-resident Companies

The Bill proposes to reduce the corporate tax rate for branches in Kenya to 30%.

Currently, non-resident companies are subjected to corporate income tax at 37.5%.

This Bill is similar to the propositions made under the Income Tax Bill, 2018 on applying a similar corporate income tax rate for both resident and non-resident entities.

This is a move that will spur more foreign investment and establishment in Kenya. With the proposition to introduce a charge on repatriated profits, this will comply with the fairness canon.

Change of Withholding Tax Rate

The Bill proposes to reduce the withholding tax rates on rent, premium or similar consideration for the use or occupation of immovable property from 10% to 7.5%.

This proposal intends to compel WHT agents to withhold at a lower rate of 7.5%.

Value Added Tax

Change of Tax Rates

Description of Goods and Services	Current Rate	Proposed Rate	Implication
Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health.	Zero Rate	Exempt	If this Bill is passed, involved companies will not be eligible to claim input VAT tax. In the long run, this will further increase the cost of business as the recoverable VAT will be passed to the consumers

Description of Goods and Services	Current Rate	Proposed Rate	Implication
All inputs and raw materials, whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary responsible for matters relating to agriculture.	Zero Rate	Exempt	If this Bill is passed, companies involved in the production of agricultural pest control products will not be eligible to claim input VAT tax. In the long run, this will further increase the cost of business as the recoverable VAT will be passed to the consumers
Agricultural pest control products.	Zero Rate	Exempt	If this Bill is passed, involved manufacturers of agricultural pest control products will not be eligible to claim input VAT tax. In the long run, this will further increase the cost of business as the recoverable VAT will be passed to the consumers
Liquefied petroleum gas.	Vatable at 8%	Exempt	This is a welcome move to the LPG industry. This will reduce the cost of acquiring or importing LPG. In addition this will encourage more investors in the manufacture of LPG who intend to establish locally.

Description of Goods and Services	Current Rate	Proposed Rate	Implication
Transportation of sugarcane from farms to milling factories	Zero Rate	Exempt	If this Bill is passed, involved transporters of sugarcane from farms to milling factories will not be eligible to claim input VAT tax. In the long run, this will further increase the cost of business as the recoverable VAT will be passed to the consumers
Fertilizers of Chapter 31	Zero Rate	Exempt	This is not a welcoming move. If this Bill is passed, involved manufacturers of fertilizers will not be eligible to claim input VAT tax. In the long run, this will further increase the cost of business as the recoverable VAT will be passed to the consumers.
Exportation of taxable services.	Vatable at 16%	Exempt	This is a welcome move as this proposal will reduce the cost of exporting services by doing away with the VAT liability. However, exempting these services implies that the respective input VAT will be restricted and not fully allowable.
Transfer of business as a going concern	Vatable at 16%	Exempt	This is a welcome move as the proposal will reduce the cost of transferring/acquiring businesses as a going concern.

Description of Goods and Services	Current Rate	Proposed Rate	Implication
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	Zero rate	This is a welcome move that will enable the suppliers to claim input VAT thereof. In the long-run, this will reduce the cost of acquiring these supplies.

Excise Duty Act

Excise Stamps and Other Markings

The Bill proposes the following offences with respect to Excise Stamps;
(6)A person commits an offense if that person—
(a) defaces or prints over an excise stamp affixed on any excisable goods or package;

(b) is in possession of excisable goods on which excise stamps have not been affixed and which have not been exempted from the requirements of this Act or Regulations made under this Act;

(c) acquires or attempts to acquire an excise stamp without the authority of the Commissioner;

(d) prints, counterfeits, makes or in any way creates an excise stamp without the authority of the Commissioner;

(e) is in possession of an excise stamp which has been printed, made or in any way acquired without the authority of the Commissioner;

(f) is in possession of, conveys, distributes, sells, offers for sale or trades in excisable goods without affixing excise stamps in accordance with this Act or Regulations made under this Act; or

(g) is in possession of, conveys, distributes, sells, or trades in excisable goods which have been affixed with counterfeit excise stamps.

The Bill also proposes to introduce a fine not exceeding 5 Million shillings or imprisonment for a term not exceeding 3 years or to both on any person who is convicted of committing above offenses.

Expansion of Excisable goods.

The Bill proposes to introduce excise tax on the following products;

Description	Rate of Excise Duty
Imported fish	Shs 100,000 per metric tonne or 20%,whichever is higher.
Powdered juice	Shs 25 per kg
Sugar excluding sugar imported or locally purchased by registered pharmaceutical manufacturer	Shs 5 per Kg
Human hair and other products of heading 6703	5%
Wigs,false beards,eyebrows and eyelashes,switches and the like, and other products of heading 6704	5%
Artificial nails of tariff 3926.90.90	5%
Imported cement	10% of the value or Shs 1.50 per Kg, whichever is higher.
Imported furniture excluding furniture originating from EAC community partner states that meets EAC rules of origin.	30%

Expansion of Excisable goods.

Description	Rate of Excise Duty
Imported cellular phones	10%
Imported paints,varnishes and lacquers of heading 3208,3209 and 3210	15%
Imported test liner heading 4805.24.00	25%
Imported fluting medium of heading 4805.19.00	25%

The propositions to introduce Excise Duty on imported products is to protect the local market and local manufacturers from external competition.

Excise Duty on Telephone & Internet Data Services

The Bill proposes to reduce the excise duty rate to 15%. Currently, this rate is at 20%

By reducing excise duty from 20% to 15%,the Bill intends to make telephone and internet data services less expensive and thus increase connectivity.More telephone and internet vendors will venture into the business since it will be profitable.

Excise Duty on Money Transfer Charges by financial institutions

The Bill proposes to reduce the excise duty rate to 15%. Currently, this rate is at 20%

With reducing excise duty from 20% to 15%,the Bill intends to encourage online banking and inter-banks money transfers.

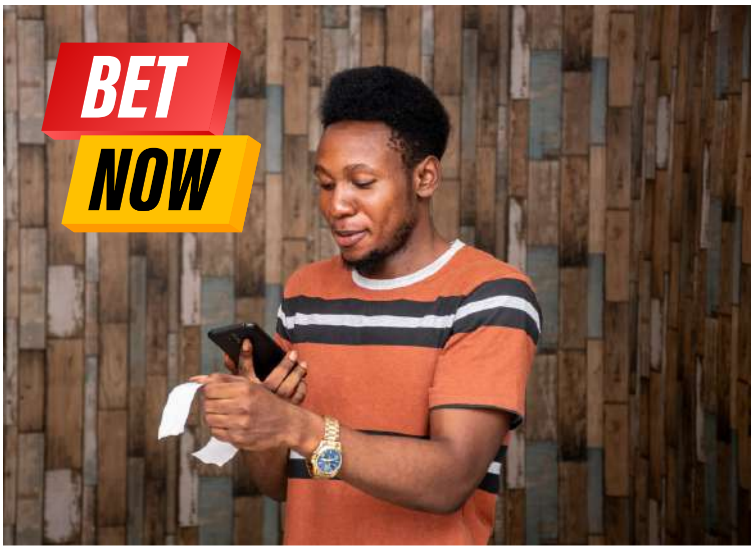
Excise Duty on Money Transfer Charges by Cellular phone providers

The Bill proposes to increase excise duty to 15% Currently,this rate is at 12%

With increasing excise duty from 12% to 15%, the Bill intends to discourage bulk money transfers through mobile phones. This move will increase revenue collection by KRA.

Excise Duty on Betting, Gaming, Prize Competition & Lottery Services

The Finance Bill proposes to increase excise duty on Betting, Gaming, Prize Competition & Lottery Services to 20%. Currently,these are subject to excise tax at the rate of 7.5%.



Raising the rate of excise from 7.5% to 20% is a move intended to reduce the participation in betting,gaming and lottery,prize competition activities by the youth while increasing the tax revenue collection by KRA. While the government intends to have Kenya as an investment hub within the region,this move will shy away some investors who may weigh the options of establishing these activities in other countries with less punitive taxes and more incentives available to them. The Finance Bill of 2022 had a similar proposal but was declined by the national assembly.

Redefinition of ‘fees’ Charged by Digital Lenders

The Bill proposes to substitute “fees” charged by digital lenders with the word “any amount”.

This move intends to bring clarity on the amounts charged by Digital Lenders that is subject to excise tax.

Excise duty on Advertisements on alcoholic beverages, betting, gaming, lotteries and prize competition

The Bill proposes to impose excise duty of 15% on advertisements on television, print media, Billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prize competition.

The Bill intends to discourage advertisement of the said products based on their negative impact to the society. Imposing excise duty will increase the cost of advertisement and thus less coverage of these items on television and print media.

Redefinition of amount wagered or staked

The Bill has proposed to redefine “amount wagered or staked” to include gaming or betting.

The Bill is bringing clarity to what includes the amount staked or wagered.

Miscellaneous Fees and Levie

Import declaration fee

The Bill proposes to reduce Import Declaration fees to 2.5 %. Currently it's at 3.5 %.

This is a welcome move for taxpayers who import goods for home use. Reducing Import declaration fee will reduce customs costs hence more imports into the country.

Railway development levy

The Bill proposes to reduce railway development levy to 1.5% which is currently at 2.5%.

This Bill intends to promote more importation and thus increase more levies for development of standard gauge railway.

Export and investment promotion levy

The Bill proposes to introduce export and investment promotion levy on all goods specified in the Third Schedule, imported into the country for home use at the rates specified in the third schedule.This levy will be exempted from goods originating from East African Community Partner States that meet the East African Community Rules of Origin.

The Bill proposes a mechanism for the government to obtain funds to boost manufacturing,
increase exports, create jobs, save on foreign exchange and promote investments.

Exemption from Import declaration fee and Railway development levy

The Bill has proposed to exempt liquified petroleum gas from import declaration fee and railway development levy.
This proposal aims at achieving environmental conservancy by many Kenyans accessing liquified petroleum gas at an affordable rate.

The Bill Proposes to introduce miscellaneous levies and fees act on the goods under Third Schedule as follows;

Tariff no	Tariff description	Export and investment promotion rate.
2523.10.00	Cement Clinkers	10% of the customs value
7207.11.00	Semi finished products of iron or non alloy steel containing,by weight, <0.25% of carbon; pf rectangular (including square) cross section, the width measuring less than twice the thickness.	10% 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 8mm	10% of custom 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	10% of customs value
4804.11.00	Uncoated kraft paper and paperboard, in rolls or sheets; kraft liner; unbleached	10% of customs value

Tariff no	Tariff description	Export and investment promotion rate.
4804.21.00	Sack kraft paper; unbleached	10% of customs value
4804.31.00	Other kraft paper and paper board weighing 150g/m or less: unbleached	10% of custom value
4819.30.00	Sack and bags, having a base of a width of 40 cm or more	10% of custom value
4819.40.00	Other sacks and bags , including cons	10% of customs value

Tax Procedures Act

Multilateral Agreement - Assistance in Collection of Taxes

The Bill proposes that any multilateral agreement or treaty that has been entered into by Kenya relating to mutual administrative assistance in the collection of taxes shall have effect in the manner stipulated in such agreement or treaty.

In addition, the Bill proposes that the commissioner will have the right to collect taxes on behalf of another government engaged in a multilateral agreement in a prescribed form.

This move shows the cooperation of the Commissioner in collecting taxes on behalf of other jurisdictions that are party to the multilateral agreement. In the long run, this procedure is intended to mitigate tax malpractices among the multinational enterprise groups in multiple jurisdictions.

Electronic Tax Invoices

The Bill has proposed that the commissioner may establish an electronic system through which electronic tax invoices may be issued and records of stocks kept.

This move on the electronic tax registration system will ensure improved tax compliance and align the practice with the VAT Act provisions on the electronic tax invoices. This will enhance transparency and VAT administration. In the long run, this will impact the revenue collection by the government to bridge the budget deficits.

Penalties for Failing to Comply with Electronic Tax Invoicing

The Bill proposes a penalty of Kes 1 Million or an amount equal to 10 times the amount of the tax due, whichever is higher.

This is a punitive move that is aimed at enhancing compliance with the electronic tax invoicing management system.

Repeal of Commissioner’s powers to Refrain from recovery of Tax

The Bill proposes to repeal Section 37 of the Tax procedures Act, which empowered the Commissioner to refrain from assessing or recovering of any unpaid tax which might have been impossible, or where there is undue difficulty in recovery or any other reason occasioning inability to recover the unpaid tax.

This is a move aimed at enhancing collection and recovery of tax that would have been abandoned due to reasons that may have been submitted by the Commissioner.

Tax Amnesty

i) To introduce a tax amnesty program for penalties and interest where the taxpayer had paid all the principal tax due before 31 December, 2022. As such, the Commissioner shall refrain from recovering penalties and interest on the principal tax due.

ii) Where the taxpayer had not paid the principal tax due before 31 December, 2022; the taxpayer shall apply to the Commissioner for an amnesty of penalty and interest on the unpaid tax and propose a payment plan for the same on the following conditions;
The amnesty shall only be on penalties and interest of upto 31 December, 2022;

- The amnesty shall be granted if the taxpayer makes an amnesty application and pays the outstanding principal taxes before 30 June, 2024.
- The taxpayer signs a commitment letter for settlement of all the outstanding taxes.
- This amnesty will not be granted if the taxpayer incurs further tax debts payable to the Commissioner.

This Bill comes as an extension of the Voluntary Tax Disclosure Program which proved successful to persons that were not compliant. This is a welcome move, that will enhance compliance among taxpayers while giving an amnesty on the penalties and accrued interest on outstanding taxes.

Security on Property for Unpaid Tax

The Bill proposes that the commissioner has 14 days to inform (in writing) the taxpayer and any other person who may have an interest in the property used as collateral for unpaid tax. Prior to this the commissioner had 7 days to inform interested parties of a property used as collateral.

The Bill intends to give more time to the commissioner to inform the taxpayer and interested parties of properties used as collateral for unpaid tax

Power to Collect Tax from Persons owing money to a taxpayer

The Bill proposes to expand the conditions under which the Commissioner can issue a notice to;
I. Where the taxpayer has defaulted in paying an installment.
Ii. The commissioner has raised an assessment and the taxpayer has not objected to or challenged the validity of the assessment within the prescribed period;

Iii. The taxpayer has not appealed against an assessment specified in an objection decision within the prescribed timelines.
Iv. The taxpayer has made a self assessment and submitted a return but has not paid the taxes due before the due date lapsed.
V. The taxpayer has not appealed against an assessment specified in a decision of the tribunal or court.

Currently, the Commissioner can only issue a notice once he's confirmed the assessment through an objection decision and the taxpayer has defaulted to appeal to the tax appeal tribunal within the prescribed times.

Appointment of rental income tax agent

The Bill proposes to introduce a new clause, empowering the commissioner to appoint an agent for the purpose of the collection and remittance of rental income tax.

This is a move to enhance tax compliance.

Objection to Tax Decision

The Bill proposes the commissioner to issue a decision on an invalidly lodged notice of objection within 7 days.

Currently the decision is issued within 14 days. Therefore this move will require the commissioner to be efficient in coming up with a decision within the stipulated time.

ADR timelines

The Bill proposes to extend the timelines of settling a dispute in the ADR to 120 days.

Currently, the act stipulates that this should be done within 90 days. While this would give more time for the review of the ADR proceedings and submissions, it would take longer to conclude on the settlement of disputes.

Tax Appeal Tribunal Act

TAT Appeal Procedure

The Bill proposes that all relevant documents as may be necessary shall be lodged to the Tribunal within 14 days from the date of filing notice of Appeal.

This has been done with an intention to expedite the Tax Appeal Tribunal cases to ensure the judgements are delivered on time without unnecessary delays.

Appeal to the High Court

The Bill has proposed that where the taxpayer is needed to appeal to the high court, the taxpayer shall deposit with the Commissioner an amount equivalent to 20% of the disputed tax or security equivalent to 20% of the disputed tax before filing the appeal to the High Court.
However, should the final judgment be made in the taxpayer's favor, the full amount is refundable to the taxpayer 30 days after the final determination of the matter.

This proposal is an aggressive way engineered to discourage taxpayers from lodging appeals against KRA beyond the Tax Appeals Tribunal. This will be a major hindrance to seeking tax dispute resolution.

Housing Act

3% contributions to the National Housing Development Fund.

The Bill proposes to introduce a contribution of 3% of the employees basic salary to the National Housing Development Fund by both the employer and the employee. The total sum of the contributions of both the employer and employee shall not exceed sh.5000 in a month.

The introduction of this proposal indicates the commitment of the new government on the Affordable Housing as one of the Big 4 Agendas. This Bill intends to enforce the contributions by both employees and employers towards affordable housing.

Contacts

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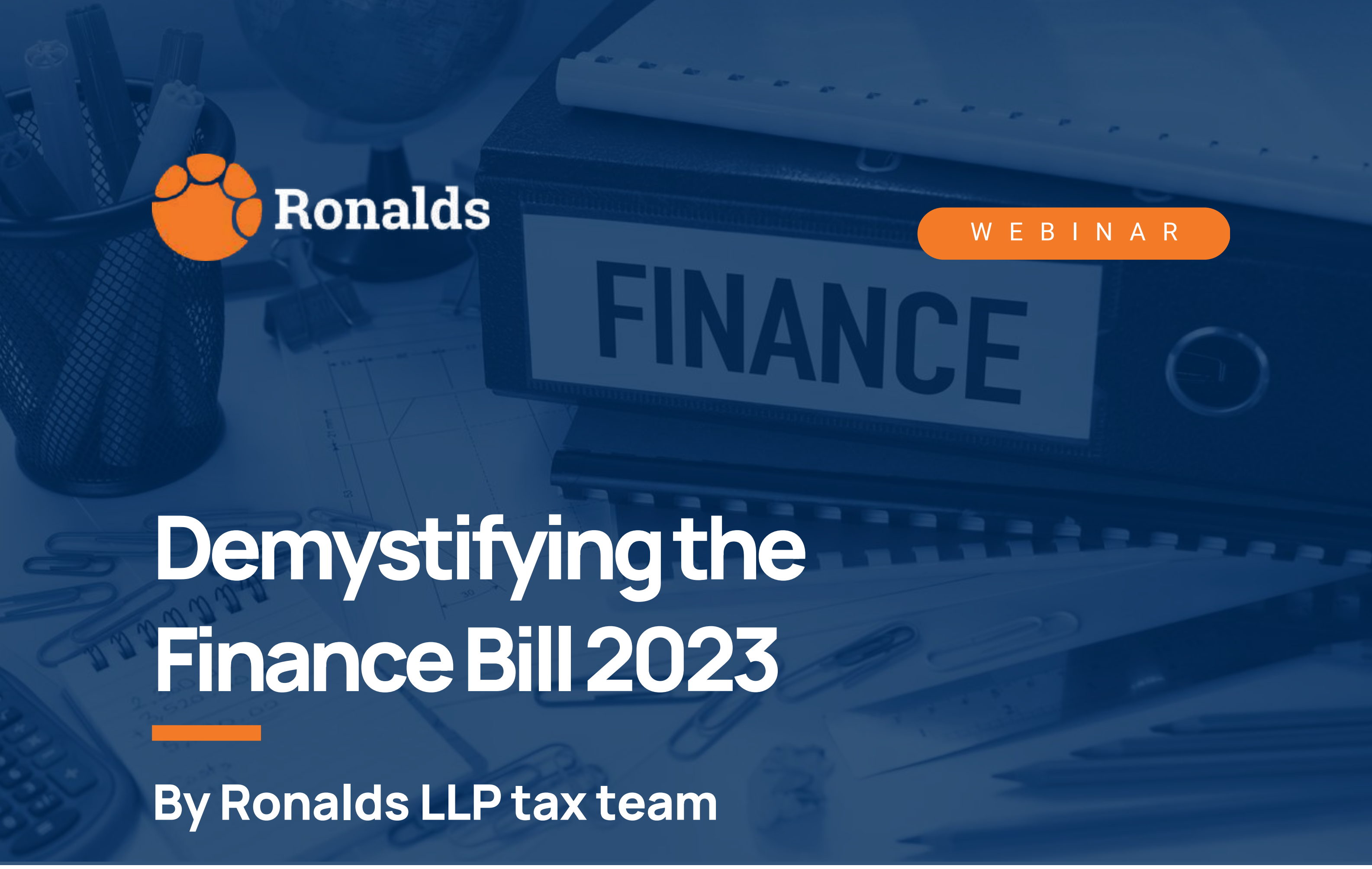

Ronalds

WEBINAR

Demystifying the Finance Bill 2023

By Ronalds LLP tax team

A break down of the impact of the proposals on your business and the economy.

May 11, 2023   From 3 : 00PM - 4:30 PM

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