



Mbaya and Associates ^{LLP}
CERTIFIED PUBLIC ACCOUNTANTS

Highlights of the Finance Act 2023

Tax Due Dates .9





Newsletter

MBAYA AND ASSOCIATES

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Introduction

We are pleased to release the seventh edition of our tax newsletter. We appreciate the lively feedback and fruitful engagement we have had in the previous editions of our newsletters. This issue will summarize the key aspects of the Finance Act 2023.

On the right column of the newsletter, you will find contact details for the senior members of our team who can help answer any questions you may have about the issues highlighted in this newsletter or any other matter.

We are interested in your feedback on the items covered and what topics you would like covered in the future.

Please provide any feedback at tax@mbaya.co.ke

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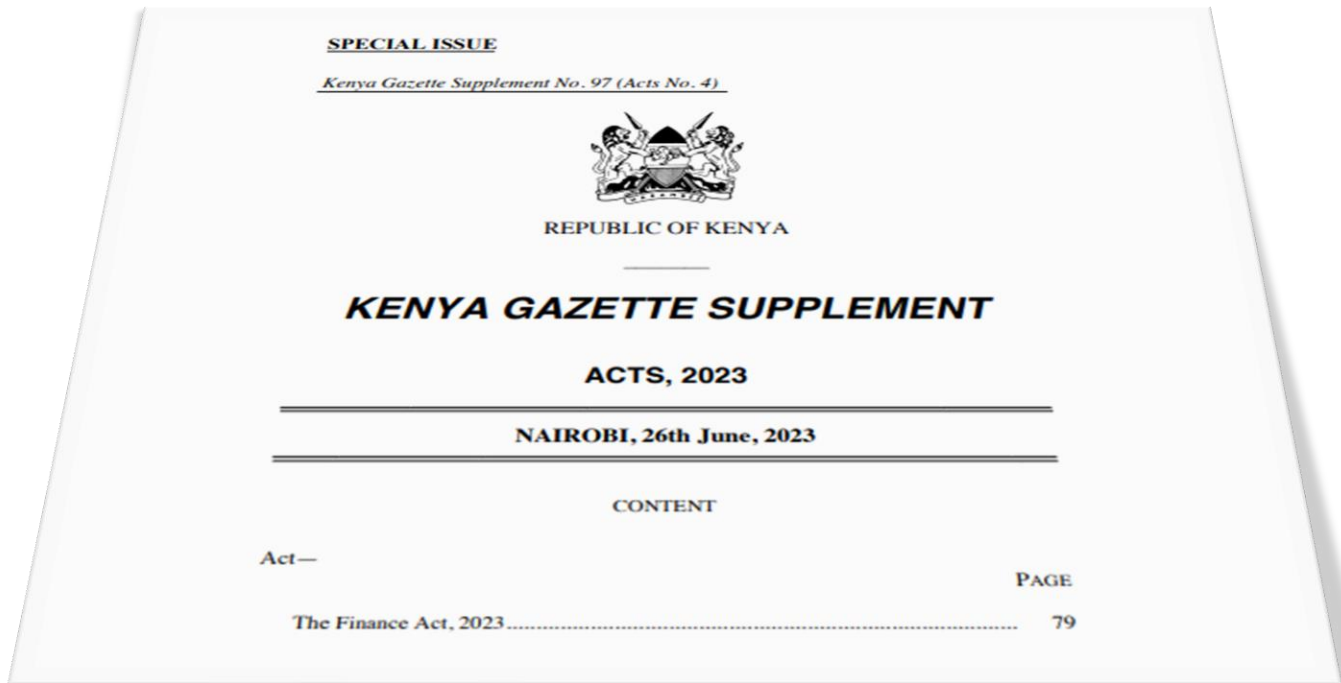
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» From the TaxDesk »



Highlights of Finance Act 2023

The Finance Act 2023 ("Act") was assented into law on 26th June 2023. Most of the changes will be effective from 1st July 2023, which is the Government's fiscal year, while a few will be effective from 1st September 2023 and 1st January 2024.

Most of the proposed changes in the Finance Bill, 2023 have been maintained in the Finance Act with a few additions. In the pages that follow, we analyse the main contents of the Act.

Corporate Tax Changes

- a) **Interest Restriction rule:** The interest Restriction will only apply on interest paid to non-resident persons in excess of 30% EBITDA. The disallowed interest is to be claimed as a deduction in the subsequent 3yrs in case the interest falls to 30% of EBITDA or lower.

The effective date is 1st January 2024.

- b) **Deferred Forex Losses Allowed within 5 years:** Deductibility of foreign exchange loss to be deferred only where interest paid or payable to nonresident persons exceed 30% of EBITDA. Currently the deferral applies to all companies where total interest exceed 30% of EBITDA. The deferred forex loss will now be allowed in the subsequent 5 years

The effective date is 1st January 2024.

- c) **E-Tims Compliant invoice a requirement for deductibility of expenditure:** No deduction shall be allowed where invoices are not generated from an electronic Tax Invoice Management System (e-Tims). The only exemptions will be transactions such as imports, emoluments, investment allowances, interest and similar payments.

The effective date is 1st January 2024.

- d) **Club subscriptions paid by the employer on behalf of an employee to be allowable:** Club subscriptions paid by an employer on behalf of an employee to be allowed as a deduction.

The effective date is 1st January 2024.

- e) **A branch to be taxed at 30%:** The corporate tax rate for a non-resident company operating in Kenya through a permanent establishment has been reduced from 37.5% to 30%. The Act has also introduced tax on the repatriated income of the branch at 15%. The repatriated profits shall be the sum of the net assets at the beginning of the year and the after-tax profits for the year less the net assets at the end of the year.

The effective date is 1st January 2024.

- f) **Introduction of Industrial Building and dock investment allowances at 10% p.a.:** Investment allowance at 10% per year has been introduced on docks and industrial buildings. Industrial buildings include those in use for purpose of transport, bridge, tunnel, inland water navigation and electricity or hydraulic power undertaking. Dock includes a container terminal berth, harbor, wharf, pier, jetty, storage yard or other works.

The effective date is 1st January 2024.

- g) **Investment Allowance on telecommunication equipment to cover civil works:** The Act has expanded the applicability of investment allowances at 10% per year in equal installments on telecommunication equipment. This will not only cover the costs of the equipment but also costs incurred on civil works deemed as part of the equipment and civil works that contribute to the use of the equipment. Civil works include earthworks and construction works undertaken in connection with the installation and maintenance of the telecommunication equipment and related structures.

The effective date is 1st January 2024.

- h) **Applicability of the 100% accelerated investment allowance:** The Act limits the applicability of the accelerated investment allowance of 100% on the high value investments made outside Nairobi and Mombasa counties to only hotel buildings, buildings used for manufacture and machinery used for manufacture. The accelerated allowance shall also not apply to investments which, due to the nature of the business, have to be located in places outside the two counties.

The effective date is 1st January 2024.

- i) **Calculation of intellectual property (IP) income subject to Preferential Tax Rate:** The Act has introduced a standard formula for determining the intellectual property income qualifying for a preferential tax rate. The qualifying IP income shall be determined using the following formula: $I=Q/T*P$ where I is the qualifying income, Q is the research and development expenditure made by the taxpayer, T is the expenditure including acquisition costs and related party outsourcing costs and P is the IP income including royalties, capital gains and any other income from the sale of an IP asset. The IP losses are to be offset against the IP incomes only.

The effective date is 1st January 2024.

Withholding Tax Changes

- j) **Introduction of Withholding Tax on Digital Content monetization payments:** WHT at 5% is to be introduced on payments made in respect of digital content monetization. The term "*digital content monetization*" has been defined as offering for payment entertainment, social, literal, artistic educational or any other material electronically through any medium or Channel. The payments will need to be included in section 10 of the ITA for the withholding tax to be legal.

The effective date is 1st July 2023

- k) **Introduction of withholding tax on Sales Promotions, Marketing, advertising payments to residents:** WHT at 5% on resident payments for marketing, advertising and sales promotion. Similar payments to non-residents are already subject to WHT. This is aimed at expanding the tax base and enhance revenue collection as well as harmonize taxation equity on various professions. This will affect media stations and marketing agencies.

The effective date is 1st July 2023

- l) **Reduction of the WHT on immovable property rent:** The withholding tax rate on immovable property rent has been reduced from 10% to 7.5%. This aligns with the deduction of the monthly residential rental income Tax rate from 10% to 7.5%. The move is to enhance compliance and encourage more landlords to pay tax. The good news will affect real estate owners and may see a growth in the sector.

The effective date is 1st January 2024.

- m) **Appointments of rental income Withholding Tax Agents:** KRA will appoint property agents who receive rental income on behalf of property owners. The property agents should withhold at 7.5% on the rental income and remit the tax to KRA within 5 days.

The effective date is 1st July 2023

- n) **Withholding Tax on Winnings:** This will be based on the payouts made after deducting the amount staked or wagered.

The effective date is 1st July 2023

- o) **Withholding tax Payment on a non-resident:** This will not be available for refund or deduction as an expense where an audit adjustment is made in respect of such payment.

The effective date is 1st July 2023

- p) **Withholding tax Payment on interest and royalties:** Such a payment to a nonresident person by a company undertaking the manufacture of human vaccines are to be exempted from tax. Therefore, no withholding tax will be applied on such payment.

The effective date is 1st July 2023

- q) **Investment income from post- retirement medical fund:** This will be exempted from tax. Any withholding tax on such investment income will not apply.

The effective date is 1st July 2023

Capital Gains Changes

- r) **Indirect Transfer subject to CGT:** The Act has introduced provisions that will impose CGT on an indirect transfer of shares (or comparable interests) where the shares or comparable interests derived at least 20% of their value directly or indirectly from immovable property in Kenya and on an indirect transfer of shares of a company resident in Kenya if the transfer held directly or indirectly at least 20% of the capital of the company.

The effective date is 1st July 2023

- s) **Determination of the adjusted costs:** The Act has introduced a provision which provides that where property was transferred in a transaction that is not subject to CGT and the subject is subsequently transferred in a transaction that is subject to CGT within a period of less than 5yrs, the adjusted cost in the subsequent transfer shall be based on the adjusted original cost as determined in the first transfer. This is an anti-avoidance provision aimed to avoid inflation of the adjusted cost.

The effective date is 1st July 2023

- t) **Due Date for CGT payment:** The Act has amended the due date of the CGT payment to be the earlier of Receipt of the full purchase price or registration of the transfer.

The effective date is 1st July 2023

- u) **CGT Exemption on internal restructuring:** The Act has Amended paragraph 13 of the eighth schedule of the Income Tax Act to introduce a provision that will limit the CGT exemption on an internal restructuring to groups that have existed for at least 24 months.

The effective date is 1st July 2023

Value Added Tax Changes

- v) **Clarification on registration threshold for non-residents making digital marketplace supplies:** The Act has Amended section 34 of the VAT such that registration threshold does not apply to nonresident persons making digital marketplace supplies in Kenya.

The effective date is 1st July 2023

- w) **Introduction of VAT on compensation for the loss of taxable supplies:** The Act has amended to introduce VAT where bonafide owner of the taxable supplies, who has deducted input tax is compensated for the loss of the taxable supplies. This amendment will require taxpayers to account for VAT on compensation for loss of taxable supplies.

The effective date is 1st July 2023

- x) **Exemption of tea sold for the purpose of value addition before exportation:** The Act has zero rated all tea and coffee locally purchased for the purpose of value addition before exportation subject to approval by the commissioner General.

The effective date is 1st July 2023

- y) **Zero-rating of inbound international sea freight offered by a registered person:** The Act has clarified that inbound international sea freight offered by a registered person is a zero-rated supply. It ensures that the supplier of the international sea freight will charge VAT at 0% as the same freight value is included in computing the taxable value of the imported goods.

The effective date is 1st July 2023

Turnover Tax Changes

- z) **Change in the Turnover tax bracket:** The Act has Amended the turnover tax income bracket from Kshs. 1 million – 50 million to Kshs. 1 million – 25 million

The effective date is 1st July 2023

- aa) **Increase in the turnover tax rate:** The Act has changed this rate from 1% to 3%

The effective date is 1st July 2023

Excise Duty Tax Changes

bb) **Inflationary adjustment of excise duty rates:** The repeal of the annual inflationary adjustments of specific excise duty rates bestowed on the commissioner.

The effective date is 1st July 2023

cc) **Excise duty on alcoholic beverages, betting, gaming advertisements:** The Act has introduced fees charged on advertisements on television, print media, bill boards and radio stations on alcohol beverages, betting, gaming and lotteries to excise duty at 15%.

The effective date is 1st July 2023

dd) **Payment of excise duty within 24hrs:** The Act has emended section 36 of the EDA and thus requiring licensed manufacturers of alcohol beverages to pay excise duty to the Commissioner within 24 hrs upon removal of the goods from the stock room.

The effective date is 1st July 2023

ee) **Payment of excise duty on betting and gaming:** Book makers to remit excise duty on betting and gaming within 24hrs from the closure of transactions of the day. The Commissioner may require any other taxpayer to remit the duty within 24 hrs from the closure of transactions of the day.

The effective date is 1st July 2023

ff) **Increase in excise duty on various services:**

1. Fees charged for money transfer services by cellular phone service providers or payment service providers licensed under the National Payment System Act, 2022 from 12% to 15%
2. Betting, gaming, price competition and lottery from 7.5% to 12.5%

The effective date is 1st July 2023

gg) **Reduction of excise duty on various services:**

1. Telephone and internet data services from 20% to 15%
2. Fees Charged for money transfer services by banks, money transfer agencies and other financial service providers from 20% to 15%

The effective date is 1st July 2023

hh) **Introduction of excise duty on various goods and services**

1. Imported fish, powdered juice and sugar
2. Locally Manufactured sugar, confectionery and Pasta

3. Human hair, wigs, false beards, eyebrows, eyelashes, switches and artificial nails
4. Imported cement, furniture, paints, varnishes, lacquers, test liner, fluting medium
5. Fees charged on advertisement, print media, billboards, radio stations etc.... at 15%
6. Imported cellular phones at 10%

The effective date is 1st July 2023

ii) **Removal of excise duty on certain goods**

1. Condensates
2. Locally manufactured articles of plastic

The effective date is 1st July 2023

Other Tax Administration Changes

- jj) **Digital Asset Tax:** The Act has introduced the tax at 3% of the gross transfer or exchange of the digital assets. The tax will affect the traders in the cryptocurrency as well as nonfungible tokens market. The tax is payable by the owner of the platform or the one who facilitates the sale of the asset. Nonresidents who own the platforms on which digital assets are exchanged or transferred should register under the simplified tax regime. The Act provides for filing of the return and paying of the tax within 5 days of making the deduction.

The effective date is 1st January 2024

- kk) **Refunds decisions to be challenged before the TAT:** The Act has eliminated refund decisions from the scope of the tax decisions. Resultantly, a decision issued in relation to a refund would constitute an appealable decision. This means the taxpayers can challenge the refund decisions before the Tax Appeals Tribunal (TAT)

The effective date is 1st July 2023

- ll) **Resident trustees to maintain records:** The Act requires residents who are trustees of trusts, whether registered in or out of Kenya to maintain and avail to KRA records as required under existing tax legislation. This is intended to monitor the activities of trusts.

The effective date is 1st July 2023

- mm) **Tax amnesty:** The Act has introduced amnesty on interest, penalties or fines on unpaid taxes. This will apply for penalties interest and fines on a tax debt where the taxpayer paid the principal before 31st December 2022. If the principal tax has not been paid by 31st December 2022, the taxpayer may apply for an amnesty for the penalties that had accrued then and the amnesty will only be granted if the principal tax will be paid by 30th June 2024, the taxpayer does not accrue further penalties and signs a commitment letter to this effect.

The effective date is 1st September 2023

nn) **Withholding VAT to be remitted within 5 days:** The Act has been amended to obligate withholding VAT agents to remit withholding VAT to KRA within 5 days after the deduction is made.

The effective date is 1st July 2023

oo) **Alternative Dispute Resolution timelines:** The Act has increased the timelines for the settlement of the tax disputes via ADR from the current 90 days to 120 days from the time the TAT permits the ADR engagements.

The effective date is 1st July 2023

pp) **Validity of objection:** Where an objection is deemed invalid, the Commissioner should specify in the invalidation notice the information required from the taxpayer and the same to be provided within 7 days. This will allow the taxpayer to remedy the defects of the objection

The effective date is 1st July 2023

1. Tax shortfall penalty
2. Shortfall penalty increased from 7.5% to 200%.

The effective date is 1st July 2023

3. Failure to issue an invoice, file a tax return or make payment electronically to attract a penalty equal to the higher of 2 times the tax due or Kshs. 1M. The tax was previously Kshs. 100,000.

The effective date is 1st September 2023

qq) **Refund or offset of overpaid tax:** The Act is amended to allow taxpayers to apply for the offset of overpaid tax against their outstanding tax debts. Currently the law allows taxpayers to apply for an offset against future liabilities. Where a taxpayer applies for a refund of an overpaid tax, the refund should be repaid within 6 months. When not done, the refund shall be used to offset any tax liabilities for the taxpayers.

The effective date is 1st July 2023

rr) **Petroleum Products to attract VAT at 16%:** The Act has increased the VAT rate of petroleum products listed in section B of part 1 of the first schedule to the VAT Act from 8% to 16%.

The effective date is 1st July 2023

ss) **Zero rating of liquefied petroleum gas (LPG):** The Act has zero rated LPG which is currently subject to VAT at 8%

The effective date is 1st July 2023

tt) **Zero rating of Exported services:** The Act has zero rated the exportation of taxable services.

The effective date is 1st July 2023

- uu) **Refund of tax on bad debts:** The Act has introduced an amendment that allows taxpayers more time to lodge the refunds relating to bad debts (from 4yrs to 10yrs now) and additionally can utilize the approved refunds against future VAT liabilities.

The effective date is 1st July 2023

Tax Due Dates

Withholding Tax | 20th Day of the following month

Pay as You Earn | 9th Day of the following month

VAT | 20th Day of the following month

Balance of Tax on Self-Assessment | 4th Month after year end

Monthly Rental Income | 20th Day of the following month

Instalment Tax

1st Instalment | 20th day of the 4th month after year end

2nd Instalment | 20th day of the 6th month after year end

3rd Instalment | 20th day of the 9th month after year end

4th Instalment | 20th day of the 12th month after year end

Kindly note that all the returns must be filed on I tax while the payments e-slips must be generated from the I-Tax platform.

Digital Service Tax (DST)

20th day of the following month

