Institute of
Economic Affairs

MEMO

Institute of Economic Affairs-Kenya's views on the Finance bill 2023 (National Assembly Bill No. 14 of 2023)

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About the IEA-Kenya

The Institute of Economic Affairs (IEA Kenya) is a think-tank that provides a platform for informed discussions in order to influence public policy in Kenya. We seek to promote pluralism of ideas through open, active and informed debate on public policy issues. We undertake research and conduct public education on key economic and topical issues in public affairs in Kenya and the region, and utilize the outcomes of the research for policy dialogue and to influence policy making.

Comments on the Finance Bill, 2023

The Cabinet Secretary of finance on Thursday, 4th May, 2023 and in compliance with the Public Finance Management Act, presented the Finance Bill 203, to Parliament for consideration. The bill proposes to make amendment to various tax laws, including the Income Tax Act (CAP 470), the Value Added Tax Act, 2013, the Tax Procedures Act, 2015, the Miscellaneous Fees and Levies Act, 2016 and the Excise Duty Act, 2015. The IEA-Kenya in response to the National Assembly call for the public to provide their input into the finance Bill 2023 have prepared some comments with a summary which shows various amendments proposed by the bill and justification of each of the proposal;

Section of the Finance Bill	Amendment	Proposed Amendment	Justification
Income Tax			
5(b)	The proposed amendment adds a provision that states any amount paid or granted to a public officer to reimburse an expenditure incurred for the purpose of performing official duties will be exempt from tax, regardless of the ownership or control of any assets purchased.	Expunge this Clause	This provision creates a disparity in the treatment of reimbursements between public and private sector workers. It is also subject to abuse especially where it suggests that costs for purchase of assets can be reimbursed regardless of who owns the assets.
9	The section seeks to amend Section 12C of the Income Tax Act in subsection (1), by deleting the words "one million shillings but does not exceed or is not expected to exceed fifty million shillings" and substituting therefore "five hundred thousand shillings but does not exceed or is not expected to exceed fifteen million shillings.	Expunge this Clause	The objective of the amendment is to broaden the scope of the turnover tax by including businesses with a turnover ranging from KES 500,000 to KES 1 million, which were previously exempted. Additionally, the proposal suggests raising the turnover tax rate from 1% to 3%. Although this proposal aims to boost tax revenue, there is a concern that it could inadvertently drive informal businesses even

			further towards adopting strategies to evade compliance.
17(a)	By deleting subsection (1) and substituting therefore the following new subsection— (1) A body of persons which carries on the activities of a members' club or trade association shall be deemed to be carrying on a business and the gross receipts on revenue account (excluding joining fees, welfare contributions and subscriptions) shall be deemed to be income from a business.	Expunge this Clause	These entities are now subject to the compliance obligations that come with running a business, and will be required to keep proper accounting records, file tax returns, and meet reporting requirements, which will add to their administrative burden. The tax treatment change will force these bodies to rethink their financial strategies, budgets, and pricing structures to account for the increased tax liability, which may necessitate the use of informal mechanisms. The reclassification of these entities as businesses creates disincentives for them to formalize their operations.
24(b)(i)	(b)in Head B— (i) by deleting paragraph 1 and substituting therefore, the following new paragraph— 1.The individual rates of tax shall be— Rate in each shilling On the first Ksh. 288,000 10% On the next Ksh. 100,000 25% On the next Ksh. 5,612,000 30% On all income over Ksh.6,000,000: 35%	Delete this Clause and consider the following: Above the income of Ksh 288,000 per annum, the National Assembly should consider a flat tax rate of between 22-24% with no income tax expenditures.[1]	Raising PAYE taxes on employees earning more than KES 500,000 per month to shore up tax revenue may have a negligible impact on revenue given that majority of employees earn below KES 100,000 per month. Additionally, it could create disincentives for high earners, increase the risk of tax avoidance and evasion, and potentially hinder economic growth.
24(b)vii	(m) in respect of payments relating to digital content monetisation, 15%	Graduate the tax bands as follows: i. Any income below Ksh. 24,000- tax-exempt	The emergence of the digital space has given rise to a new avenue for employment, where individuals can monetize their digital content through various means such as advertisements, sponsorships, and affiliate marketing. To ensure

[1] IEA's simulation shows that a flat tax rate of 24% would give Ksh 576 billion in PAYE alone.

	(The amendment requires that persons making payment to digital content creators be required to withhold and remit 15% withholding tax)	ii. 5% for incomes above Ksh. 24,000 but below Ksh. 250,000 iii. 10% for earnings above Ksh. 250,000 but below Ksh. 500,000 iv. 15% for earnings above Ksh. 500,000	fairness and equity, it is important to establish a graduated tax rate that distributes the burden of taxation proportionately.
Value Added Tax			
According to a study undertaken by National Treasury titled Kenya Comprehensive Public Expenditure Review 2017, the poverty rate increases by more than five percentage points after VAT is accounted for. This is explained in the Fiscal Incidence Analysis chapter on page 43 (First Sentence). The use of VAT as a measure to raise revenue should be limited because its imposition would hurt households directly and affecting disproportionately households below the poverty line and those above it. The IEA proposes that, by Parliament expanding the scope of VAT would be an inefficient trade-off because it would be hurting families and households directly.			
5(2) aa, ab	By deleting paragraph (ab) in the case of the supply of liquefied petroleum gas including propane at eight percent	Retain the proposal. Exemption of Liquefied Petroleum Gas (LPG) from VAT.The Finance Act 2022, implemented VAT on LPG from the rate of 16% to 8%.	A relief to households which will have an impact of reducing the cost of living and improve access to clean energy in Kenya
8(2)	Deleting the words "not a registered person and" and substituting therefor the words "a registered or unregistered person in section 8 subsection 2 which stipulates, If the place of business of the supplier is not in Kenya, the supply of services shall be deemed to be made in Kenya if the recipient of the supply is not a registered person	Section 8 of the Value Added Tax Act, 2013, is amended in subsection (2), to include registered or unregistered person supplies of services in Kenya. Supplies made in Kenya by non-resident to residence whether registered or unregistered will henceforth be assumed to be made in Kenya.	Aimed at collecting more revenue for business operating in Kenya which might push business operations out of country in the long run
33(xvi)	Deleting paragraph 63 and substituting therefor the following new paragraph 63. Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of one hundred, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption.	Amend the proposal by replacing "bed capacity of 100", with "bed capacity of at minimum of 20" and delete all words in the sentence after that.	This clause is intended to provide incentives for investments in hospitals and health provision centres but the arbitrary decision to make it applicable to only hospitals with a bed capacity of a minimum of 100 is arbitrary and would be discriminatory to investors in rural areas and poor urban areas where hospital services are provided in smaller units. In addition, the deletion ensures that the Cabinet Secretary does not retain powers that violate the constitution by making decisions on which investment should receive a tax waiver.
33(xx)	Deleting paragraph 108 which stipulates that the supply of maize (corn) flour, cassava flour, wheat	Retain the proposal	The supply of these products mentioned in this clause which should be more than ten percent in

	or meslin flour and maize flour containing cassava flour by more than ten percent in weight: Provided that this paragraph shall, subject to paragraph 20 of the Second Schedule, be suspended for six months from the date of assent.		weight will be zero rated. Maintaining the zero rate will make the cost of production lower as producer's will be able to claim input VAT.
34(1)	Amending subsection (1) by by deleting the provision and substituting therefore the following new provision "Provided that a person supplying imported digital services over the internet, an electronic network or through a digital marketplace shall register whether or not the taxable supplies meet the turnover threshold of five million shillings."	Delete the Clause. Amendment of Section 34 of the Value Added Tax Act, 2013, will mean that provided that a person supplying imported digital services over the internet, an electronic network or through a digital marketplace will be liable to register for VAT irrespective of whether the business has an annual threshold of Ksh. 5 million.	The supplier of digital services will be required to register their companies for VAT.This move is seen as a strategy of Widening the tax base to support government programmes and increase revenue collection. There is no reason to require registration for firms that do not reach the threshold for collection of VAT.
43(1)	Amendment of section 43 on keeping of record in Kenya	Retain this Clause The amendment deletes the word "in Kenya" implying that one can keep business records elsewhere not necessary in Kenya.	A good move by the government since we are in the digital era which helps entities to reduce the administration cost associated with keeping records within Kenya territory. However, this is seen an ulterior motive for the government to bring firms into the digital service tax
1st schedule sec 1 (a)(i)	Fish and crustaceans, muluscs and other quatic inveterbrates of Chapter 3 excluding those of tariff heading 0305, 0306 and 0307	Change of tariff description to fish and crustaceans, molluscs and other aquatic invertebrates of Chapter 3 excluding those of tariff headings 0305, 0306 and 0307	The proposed product description remain VAT exempted with the intention cleaning up the tariff description.
1st schedule sec 1 (a)(i)	Medicaments containing alkaloids or derivatives thereof but not containing hormones or other products of heading No. 29.37 or antibiotics, not put up in measured doses or in forms or packings for retail sale.	Change of tariff description to 3003.41.00, other medicaments, containing alkaloids or derivatives thereof, put up in measured doses or in forms or packings for retail and sale	The proposed product description remain VAT exempted with the intention of cleaning up the tariff description.
34a(i)	Deleting paragraph 11 which stipulates that Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved from time to time by the Cabinet Secretary in consultation with the	Delete the Clause	The VAT cost will lead to a rise in the cost of health products. This clause also gives discretion to the Cabinet Secretary to create tax changes and discriminate between firms, a result that would violate article 210 of the constitution.

	Cabinet Secretary responsible for matters relating to health.		
34a(ii)	Deleting paragraph 16 which stipulates all inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.	Delete the Clause because the it seeks to make inputs supplied to manufacturers from zero rated to exempt	Manufacturers will not be able to claim input VAT which will affect the cost of production. These costs will be shifted to farmers which will have an effect in the cost of food at the household level
34a(iii)	Deleting paragraph 19 which stipulates Agricultural pest control products.	Delete the Clause as it proposes to change to change the rate from zero rated to exempt	The change from zero rate to exempt implies the taxpayer will not be able to claim input VAT.
A (62)	By deleting paragraph 62 which stipulates that 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.	Amend the clause to all construction of tourism facilities that pass a threshold of 10 million shillings in total investments or recreational parks of at least 15 acres.	The proposal is not making the tax advantage applicable to as many firms as can invest without the introduction of an arbitrary and discriminatory standard of land at 50 acres. Apply clear and transparent rules that bare not dependent on the interpretation and judgement of the Cabinet Secretary.
Miscellaneous Fees and Levies			
7 (a)	by deleting the words "three point five" and substituting therefor the words "two point-five";	Retain the proposal. The finance bill proposes the reduction of Import Declaration Fee (IDF) within the East African region from 3.5% to 2.5%. of the customs value of the goods imported into the country.	The proposal is aimed at harmonizing the IDF within the EAC community and lower the cost of inputs imported in the country.
7A (1)	Introduction of a levy for investment promotion known as the export and investment promotion levy, on all goods specified in the Third Schedule, imported into the country for home use.	Delete the Clause	This clause would raise the cost of acquisitions for home use and would be additional to VAT and Import duties that already apply.
8 (a)	Deleting the words "two point five" and substituting therefor the words "one point-five";	Retain the proposal. The bill proposes the Reduction of Railway Development (RDL) Levy from 2.5% to 0.5%	Reduction in RDL is a relief to importers and this will promote growth in the country.
Excise Tax			
40	Amendment of section 28 of the Excise Duty Act 2015, by inserting new subsections after subsection 5	The new amendment proposes to introduce a fine relating to excise stamps. A fine of Ksh 5 M or a jail term not exceeding 3 years or both upon doing these:	

		1. Defacing or printing over and excise stamp placed on any excisable good or package. 2. Knowingly being in possession of excisable goods on which stamps have not been attached and haven't been exempted from the requirements under law 3. Printing or creating counterfeits in excise stamps without authority 4.Acquire of attempt to acquire an excise stamp without authority 5.Possession of an excise stamp which has not been printed, made or in any way acquired without authority 6.Possession of, transporting, distribution, selling, offer for sale or trade in excisable goods without placing excise stamps in accordance with the Excise Act or Regulations 7.Possession of, transporting, selling, distribution or trading in excisable goods which must be attached with counterfeit excise stamps			Amend to include penalties only for a person "who knowingly purchases or trades in goods for which Excise Stamps have not been attached".
41	Amendment made by adding a new section immediately after section 36	36 An Excise duty on betting and gaming or collected on certain excisable services shall be remitted within 24 hours from closure of transactions of the day			The expansion of goods for which Excise taxes are available means that compliance with this rule would be too onerous for traders. Amend it to require remittances of Excise Tax deduction for all Excisable good to be made on the last day of every month
43	Change in rates of different excisable goods	**Excisable Item**	**Old rate**	**New Rate**	
		Telephone and internet data services	20%	15%	1. Reduce the new rate to 5% to allow consumers to afford calls for private and business purposes.
		Fees charged for money transfer services by banks, money transfer agencies and other financial service	20%	15%	2. Abolish all fees on banking charges or reduce all to a flat fee of 5%
		Betting	12%	15%	

		Gaming	7.5%	20%	
		Prize competition	7.5%	20%	
		Lottery	7.5%	20%	
		Advertisement on elevation, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries, and prize competitions	N/A	15%	
43	Amendment of excise duty scope	**Excisable item**	**Proposed change in scope**		
		Articles of plastic tariff heading 3923.30.00	Imported articled of plastic tariff heading 3923.30.00 and 3923.90.90		
		Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni, couscous, whether prepared or not prepared	Pasta of tariff whether cooked or not cooked or stuffed ((with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni, couscous, whether prepared or not prepared		Abolish all excise taxes on food items prepared for human consumption.
43	Introduction of new tax rates	**Excisable item**	**Old Rate**	**New Rate**	
		Imported Fish	N/A	Ksh 100,000 per metric tonne or 20%, whichever is higher	Abolish this tax on imported fish products because it will merely raise cost of food without any protective effect on domestic industry.
		Locally manufactured sugar confectionery (inclusive of white chocolate), not containing cocoa	N/A	Ksh 242.29 per kg	

		Locally produced pasta of tariff no 1902, cooked, uncooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni. Couscous, prepared or not prepared	N/A	20%	
		Powdered juice	N/A	Ksh 25 per kg	
		Sugar excluding sugar imported or locally purchased by registered pharmaceutical manufacturer	N/A	Ksh 5 per kg	
		Human hair and other products of heading 6703.	N/A	5%	
		Wigs, false beards, eyebrows and eyelashes, switches, and the like and other products of heading 6704	N/A	5%	Abolish Excise taxes on wigs because there is a substantial number of Kenyans who wear wigs not for luxurious consumption but because of the results of life-saving treatment such as chemotherapy.
		Artificial nails of tariff 3926.90.90	N/A	5%	
		Imported cement	N/A	10% value or Ksh 1.5 per kg, whichever is higher	
		Imported furniture excluding furniture from East African Community Partner States that meet the EAC Rules of Origin	N/A	30%	
		Imported paints, vanishes and lacquers of heading 3208, 3209 and 3210	N/A	15%	

		Imported Test liner of heading 4805.24.00	N/A	25%	
		Imported fluting medium of heading 4805.19.00	N/A	25%	
		Condensate per 10001@20 deg C of Tariff 2709.00.10	Ksh 6,225.00 per kg	0	

Tax Procedures			
6A	Amendment to section 6A by adding subsection (3) on mutual administrative assistance in the collection of taxes under multilateral agreements and treaties	The Bill proposes to add a new subsection under 6A (International tax agreements). The new subsection has the same wording as subsection (1) except for the words "**mutual administrative assistance in the collection of taxes".** We propose that the new subsection is deleted and the words "mutual administrative assistance in the collection of taxes" be inserted immediately after "relating to" in subsection, 1 that already exists.	A tax law does not have to be complex with too many wordings. The new subsection is speaking to a related matter in subsection (1).
23A (5)	Section 5 of the new section 23A provides that the Commissioner may, by notice in the Gazette, exempt a person from the requirements of this section.	Subsection 5 gives discretion for exemption to the Commissioner. This can lead to selective application of the law. The proposed amendment of the subsection should clarify persons exempted from the requirements of the section.	Helps to achieve inclusivity and equal application of the tax law, particularly the new introduced section.
47(b)(ii)	Amendment of section 55 by increasing the number of days for settling disputes from 90 days to 120 days.	Shorten the amount of time for settling tax disputes out of court to 60 days from 90 days instead of increasing to 120 days.	For efficient administration of tax laws, time taken to settle disputes should be shorter.
84	Amendment to increase the tax shortfall penalty from 75% of the tax shortfall to double the amount of the tax	Payment of 100% of the shortfall and late payment interest.	The measure is will encourage compliance

Customs Taxes			
7	2A (a, b, c)	(2A)(c) states that 3.5% shall be charged on the custom value of input for construction of affordable housing scheme.	In an attempt to subsidize housing for a minority and unrepresentative few, the government will levy taxes in the form of import declaration fees. In Kenya, public housing schemes have not been successful. Furthermore, the design of this levy does not consider that housing is not a supply problem but that it is a problem related to demand. People live where they can afford to live.
7	7(3)(a,b)	7(3)(a,b) The design considers East African Community Duty and provides a slight exemption.	Importers must still pay a declaration fee of 1.5% of the value of imports.
7	7(6)	7(6) 10% of the fees collected will be used to create a fund. The funds will be used to make payments for Kenya's contributions to the African Union and other international organizations in which Kenya is party to.	This is a reflection of the fact that the public sector in Kenya has created too many funds with little transparency of operations and effectiveness. The fund is also an indication of the creative ways in which the Kenyan government is attempting to navigate its dire financial situation.
8	8(1-5)	8(1-5); Proposes the establishment of a Railway Development Levy. The funds raised by the levy will be used to construct and maintain a standard gauge railway. The levy rate shall be 2% of the customs value of the goods.	The economics of railway and road transport infrastructure should be compared in order to ascertain which approach is superior.

General Proposal: Parliament should include a "Sunset Clause" on all clauses in this Finance Bill 2023. A major tax change such as the Finance Bill 2023 is being justified by the public debt overhang in Kenya and parliament should therefore impose any changes in tax rates with an express date of expiry. We propose no more than 3 years from the date of commencement of each tax proposal in 2023.

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