

**An analysis of the changes recommended by the National Assembly Departmental  
Committee on Finance Bill 2023**

**Introduction**

The Finance Bill, 2023 (the Bill) was tabled in the National Assembly for First Reading on 4 May 2023. Afterwards, the Bill was referred to the Departmental Committee (the Committee) on Finance and National Planning for consideration. Following a request for comments from members of the public and various stakeholders, the Committee received over one thousand submissions from different stakeholders. The Committee, in its report commended the improved rates of public participation in this year's Finance Bill. After the public participation exercise, the Committee forwarded its report back to the National Assembly on 16 June 2023 with a recommendation that the Bill be approved with some amendments. In this overview, we assess some of the major amendments made by the Committee to the Finance Bill, 2023.

<b>Section</b>	<b>Initial Proposal in the Finance Bill, 2023</b>	<b>Amendments proposed by the Committee</b>
<b>(a) Income Tax Act (ITA)</b>		
<i>Clause 2: Definition of "related person"</i>	The Bill proposed to introduce another definition of "person" to mean, "in the case of an individual, a reference to a relative, as defined in Section 26(5), of that person; and a company"	The Committee deleted this proposed definition of "persons" since the word is already defined in the Tax Procedures Act.
<i>Clause 2 (a): Definition of winnings</i>	Proposed amendment of Section 2 of the ITA to change the definition of "winnings" to include payout without deducting the amount staked or wagered.	The Committee agreed with stakeholders to exclude the amount staked or wagered from the definition of "winnings"
<i>Clause 4(a) (ii): Foreign exchange losses deferral</i>	Proposed amendment to cap the realised foreign exchange loss deduction period to 3 years from the date the loss was realised.	The Committee amended the period of claiming foreign exchange losses from 3 years to 5 years as the increased period would be enough time for claiming foreign exchange losses.
<i>Clause 6: Taxation of repatriated income</i>	Proposed amendment to introduce a tax on repatriated income where a non-resident person is carrying on	The Committee amended the clause to provide a rate of 15%.

	business in Kenya through a permanent establishment. No rate was prescribed for this tax.	
<i>Clause 9: Turnover tax</i>	Proposed amendment to change the band of turnover tax from Kes 1,000,000 - Kes 50,000,000 to Kes 500,000 – Kes 15,000,000.  Additional proposal to revise the rate of turnover tax from 1% to 3%.	The Committee amended the band of turnover tax to between Kes 1,000,000 – Kes 25,000,000. It retained the rate at 3%.
<i>Clause 10: Introduction of a new tax known as Digital Asset Tax (DAT)</i>	Proposed amendment to introduce a tax called Digital Asset Tax (DAT) at the rate of 3% and to be remitted within 24 hours after making the deduction.	The Committee amended the clause by extending the days a taxpayer is required to remit the WHT from 24 hours to 5 working days.
<i>Clause 24(b): Increase in PAYE for all income above Kes 500,000 per month.</i>	Proposed amendment to introduce a graduated PAYE of 35% for all income above Kes 500,000 per month.	The Committee rejected proposals to delete this clause in the Bill but amended it by introducing a new tax band of 32.5% for incomes between Kes. 500,000 – Kes 800,000 per month and 35% for incomes above Kes. 800,000 per month.
<i>Clause 20 (c): Remittance of withholding tax</i>	Proposed amendment to remit withholding tax within 24 hours instead of on or before the twentieth day of the month following the month in which the deduction is made.	The Committee amended the timeframe for remittance of the tax to 5 working days.
<i>Clause 20: Withholding tax on Digital Content Monetization</i>	Proposed amendment to introduce withholding tax at the rate of 15% on digital content monetisation.	The Committee amended the proposed rate to be 5% to harmonize it with the WHT rate of other professional sectors.
<b>(b) Value Added Tax Act</b>		

<i>Clause 33 (153): Removing supply of LPG from zero-rating to VAT exemption</i>	Proposed amendment to delete the supply of LPG from zero-rating and re-categorizing it under VAT exemption.	The Committee agreed to move the supply of LPG to zero-rating as opposed to categorizing it under VAT exemption.
<i>Clause 33 (xvii): Standard VAT on clean cooking stoves</i>	Proposed amendment to remove clean cooking stoves from VAT exemption to standard VAT of 16%.	The Committee agreed to retain clean cooking stoves under VAT exemption as opposed to being subjected to the standard 16% VAT.
<i>Clause 33(xxx): Removal of sugarcane transportation, inputs and raw materials for fertilizers and pest control from zero-rating to VAT exemption</i>	Proposed amendment to remove sugarcane transportation, inputs and raw materials for fertilizers and pest control from zero-rating to VAT exemption.	The Committee agreed to retain sugarcane transportation from farms to milling factories, inputs and raw materials for fertilizers and pest control under zero-rating as opposed to VAT exemption.
<i>Clause 34(a)(i): Removal of supply of raw materials for pharmaceutical manufacturers from zero-rating to VAT exemption</i>	Proposed amendment to re-categorize the supply of raw materials for pharmaceutical manufacturers from zero-rating to VAT exemption.	The Committee agreed to retain the supply of raw materials for pharmaceutical manufacturers at zero-rating as opposed to VAT exemption.
<i>Clause 33(a)(xxx): VAT exemption on tea for exportation</i>	Proposed amendment to include tea sold for the purpose of value addition before exportation under VAT exemption.	The Committee agreed to amend to also include coffee.
<i>Clause 34(a)(vi): VAT on exported services</i>	Proposed amendment to categorize all exported services under VAT exemption.	The Committee agreed to make exported services zero-rated as opposed to exempt.
<i>Clause 33(a)(xix)</i>	Proposed amendment to remove materials for plastic recycling plants from VAT exemption to standard VAT of 16%.	The Committee agreed to retain the materials for plastic recycling plants under VAT exemption.
<b>(c) Tax Appeals Tribunal Act</b>		
<i>Clause 36</i>	Proposed amendment to introduce a requirement for	The Committee agreed to have this proposal deleted.

	taxpayers to deposit with the Commissioner 20% of the disputed tax before they file an appeal to the High Court.	
<b>(d) Excise Duty Act</b>		
<i>Clause 43(a)(iv): Excise duty on pasta</i>	Proposed amendment to collectively charge excise on both imported and locally produced pasta at the rate of 20%.	The Committee agreed to delete the clause seeking to impose excise on pasta both imported and locally produced.
<i>Clause 43(a)(vi): Excise duty on wigs, false beards, human hair, and other products</i>	Proposed amendment to introduce an excise duty on wigs, false beards, human hair, and related products at the rate of 5%.	The Committee agreed to remove the proposed excise duty on wigs, false beards, human hair, and other related products.
<i>Clause 43(b)(iii): Excise duty on mobile money transfers</i>	Proposed amendment to increase excise duty on mobile money transfers from 12% to 15%.	The Committee agreed to retain excise duty on mobile money transfers at 12% as opposed to the proposed 15%. However, the CS National Treasury has recommended a different approach by recommending a reduction on the excise duty from 12% to 10%.
<i>Clause 43: Excise duty on betting.</i>	Proposed amendment to increase excise duty on betting from 7.5% to 20%.	The Committee agreed to reduce excise duty on betting to 12.5%.
<b>(e) Tax Procedures</b>		
<i>Clause 52: Notification by KRA for security on property for unpaid tax</i>	The Bill proposes to amend section 40 of the TPA by requiring the Commissioner to, within fourteen days after the registration of notification to Registrar of Lands of a restraint of disposal on a defaulting taxpayer's property to	The Committee agreed to delete clause 52 to ensure taxpayers enjoy the right to fair administrative action and prevent the <i>violation</i> of a person's right to property

	inform in a taxpayer and any other person who may have interest in the property identified in the notification. Initially the notification period was seven days.	
<i>Clause 54(b): Shorter time for remitting withholding VAT</i>	The Bill proposes to amend section 42A of the TPA by reducing the time provided for remitting withholding VAT to the Commissioner to three days after the deduction was made. Previously the tax withheld in the section was to be remitted to the Commissioner on or before the twentieth day of the month following the month in which the deduction was made.	The Committee observed that the 3-day timeline period will cause administrative challenges to business.  The Committee amended sub-clause (b) by increasing the remittance period to 5 working days.
<i>Clause 59: Court's discretion to allow the taxpayer to introduce new grounds of appeal</i>	The Bill proposes to amend section 56 of the TPA by removing the Tribunal's, High Court's, or Court of Appeal's discretion to allow an appellant taxpayer to rely on new grounds of appeal.	The Committee agreed to delete clause 59 because the court has inherent power to admit new grounds in a case before it.
<i>Clause 61: Increase in the tax shortfall penalty</i>	The Bill proposes to amend section 84(2)(a) of the TPA by increasing the tax shortfall penalty for a person who deliberately issues a statement that is false or from seventy-five (75%) of the tax shortfall to double the amount.	The Committee agreed to delete clause 61 since increasing the penalty to double the amount of the tax shortfall would be excessive and disproportionate to the offence, especially given that there are already other penalties and sanctions that can be imposed on taxpayers who engage in fraudulent or negligent conduct.
<i>Clause 62: Penalty for failing to comply with electronic tax system</i>	The Bill proposes to amend the TPA by repealing section 86 and substituting it with a new section empowering the Commissioner to	The Committee agreed to delete or amend clause 62 to include the right of a taxpayer to appeal

	<p>issue a notice in writing to a taxpayer who fails to comply with a tax law requiring them to issue an electronic tax invoice.</p> <p>If reasons given are unsatisfactory, the amendment asserts that a taxpayer shall be liable to a penalty of one (1) million shillings or an amount equal to ten times the amount of the tax due, whichever is higher. Previously the penalty was one hundred thousand shillings (KES 100,000)</p>	of the decision to ensure fairness and the right to justice.
<i>Clause 66: Concurrent civil and criminal proceedings</i>	The Bill proposes to amend the TPA by introducing section 108A which requires the fact that a dispute under a tax law in any ongoing criminal case and pending in any civil case not to be used as a ground for stay, prohibition or delay of either the criminal or civil case.	The committee agreed to delete clause 66 since the proposal will lead to abuse of the court process and lead to infringement of the rights of the taxpayers.
<b>(f) Miscellaneous Fees and Levies</b>		
<i>Clause 67: Import declaration fee on imported goods for home use</i>	Proposed amendment to reduce the rate of import declaration fees from 3.5% to 2.5% of the customs value of imported goods.	The Committee agreed to have a flat Import Declaration Fee at the rate of 2.5% on all goods imported into the country for home use.
<b>(g) Miscellaneous</b>		
<i>Clause 76: Deductions into the National Housing Development Fund</i>	The Bill proposes to amend the Employment Act, 2007 by introducing section 31B requiring an employer and employee to contribute to the National Housing	The Committee amended clause 76 to make it a tax/levy as opposed to a mandatory contribution.

	<p>Development Fund (“NDHF”) established under section 7 of the Housing Act.</p> <p>The proposed employer’s contribution is three percent (3%) of the employee’s basic salary and the employee’s contribution is three percent (3%) of the employee’s monthly basic salary. Nonetheless the sum of the employer’s and employee’s contribution should not exceed five thousand shillings (Kes 5,000) per month</p>	<p>Further the rate was reduced from 3% to 1.5%.</p> <p>The Committee amended the proposal by increasing the remittance period from 9<sup>th</sup> to the 20<sup>th</sup> of the following month after deduction to enable the construction and provision of affordable housing.</p> <p>The Committee also proposed to remove the Kes 5,000 cap for contributions to the Housing Fund.</p> <p>The Committee finally recommended that the clause shall become effective following operation of the regulations</p>
<p><i>Clauses 78 and 79: Removing the automatic expiry of statutory instruments</i></p>	<p>The Bill proposes to amend section 20 of the Statutory Instruments Act 2013 by removing the automatic expiry of statutory instruments</p>	<p>The Committee agreed to delete the proposal in the Bill as there is constant need to update the statute book to keep laws up to date.</p> <p>Additionally, the Committee observed that any amendments to the statutory Instruments Act should come through Parliament (Committee on Delegated Legislation) not the Finance Bill.</p>