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Our Reference  
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Date

Alex Kanyi  
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19 May 2023

**Attention: Mr. Samuel Njoroge**  
By email: [clerk.nationalassembly@parliamnet.go.ke](mailto:clerk.nationalassembly@parliamnet.go.ke)

Dear Sir

### SUBMISSION OF CLIFFE DEKKER HOFMEYR (CDH)'S MEMORANDUM ON THE FINANCE BILL, 2023

We write to submit the memorandum of our law firm (Cliffe Dekker Hofmeyr) on the Finance Bill, 2023 (the Bill) for consideration by the Departmental Committee on Finance and National Planning (Committee). Our firm has intensively reviewed the Bill and prepared a memorandum with a comprehensive set of comments and suggestions. We have attached it herein for your reference.

This submission is in line with the principle of public participation in fulfilment of Articles 10 and 118(1)(b) of the Constitution and Standing Order 127(3) of the National Assembly, which encourages stakeholders to provide their input on bills under consideration.

We are available to provide clarifications during the Committee's hearings and remain committed to supporting the legislative process in Kenya. The undersigned can be reached on email [alex.kanyi@cdhlegal.com](mailto:alex.kanyi@cdhlegal.com) or on either of the following telephone numbers +254 204 409 918, +254 731 086 649, +254 710 560 114 or +254 724 498 999 (personal).

Yours faithfully

**ALEX KANYI**

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### **Memorandum on Finance Bill, 2023 (the "Bill")**

**19 May 2023**

**(a) Income Tax Act**

Item	Topic	Current Provision of the Bill	CDH's Proposed Amendment	Justification of the proposed amendment
1.	Definition of the word person	<p>The Bill proposes at Section 2 to amend Section 2 of the Income Tax Act (ITA) by inserting the following new definition:</p> <p>"person" includes –</p> <p>(a) in the case of an individual, a reference to a relative, as defined in section 26(5), of that person; and</p> <p>(b) a company</p>	<p>We propose that the extended definition of a person to refer to a relative as provided in section 26(5) be deleted.</p>	<p>The proposed amendment will extend the definition of who a person is to include relatives under Section 26(5) of the ITA. These relatives include aunts, spouses, ancestors, uncles, step-parents, nieces and nephews among others.</p> <p>The implication of the proposed amendment is that the tax liabilities of an individual would easily be interpreted to include the tax liabilities of the person's relatives. This is not logical since the tax liabilities of one person cannot be extended to another just because they are relatives.</p>
2.	Withholding tax rate on digital content monetization for residents.	<p>The Bill proposes at Section 2 to amend Section 2 of the ITA by defining term "digital content monetization" to mean offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel, in various digital forms.</p>	<p>We propose that the rate of withholding tax on digital content monetization be reduced to a reasonable and standard rate such as 5% for residents.</p>	<p>The proposed withholding rate of 15% in the Bill is relatively higher than the standard rate that is applicable to management/professional fees for residents. The effect of it is that digital content creators are likely to be subjected to a higher withholding tax rate unfairly and unnecessarily.</p>

Item	Topic	Current Provision of the Bill	CDH's Proposed Amendment	Justification of the proposed amendment
		The Bill further proposes at Section 24(b)(vii) to introduce withholding tax at the rate of 15% on digital content monetization.		
3.	Repatriated Income	<p>The Finance Bill, 2023 proposes at Section 6 to introduce a tax on repatriated income in cases where a non-resident conducts business in Kenya through a permanent establishment. This new tax would be complementary to the tax charged on profits derived from a permanent establishment.</p> <p>The Bill clarifies that in determining repatriated income re-evaluation of assets will be excluded from the net assets.</p>	There should be a prescribed rate for the tax on repatriated income to provide clarity on how this tax would be effected. The provision should therefore be deleted.	<p>All current taxes in the law have prescribed rates to promote clarity and consistency. It would therefore be prudent for more clarity to be given on the specific rate that the government plans to impose this tax.</p> <p>Considering that the rate has not been prescribed, the provision should be deleted as it has not gone through public participation.</p>
4.	Disallowing refund of excess withholding tax	Section 7 of the Bill seeks to amend Section 10 of the Income Tax Act by	This proposed amendment should be deleted from the Bill.	Audit adjustments may reveal that a company has erroneously overpaid withholding tax in relation royalties, professional or management.

Item	Topic	Current Provision of the Bill	CDH's Proposed Amendment	Justification of the proposed amendment
	arising from audit adjustments.	inserting the following new subsection immediately after subsection (2) –  (3) where a payment has been made to a non-resident person, withholding tax paid thereon shall not be refundable or available for deduction against the income where an audit adjustment has been made in respect of such payment.		This proposed amendment will prohibit refund from such overpayments, a move which is unjust to taxpayers.
5.	Increase in turnover tax band	The Bill proposes at Section 9 to amend Section 12C of the Income Tax Act to change the band of persons eligible to pay turnover tax from Kes 1,000,000 – Kes 50,000,000 to Kes 500,000 -Kes 15,000,000.  The Bill also proposes to increase the rate of turnover tax from 1% to 3%.	The proposal to amend Section 12C of the Income Tax Act by changing the bands for turnover tax should be deleted from the Bill and the current bands retained.  The increase in turnover tax to 3% can however be maintained.	Maintaining the proposal to increase the turnover tax to 3% is not necessarily a bad change since that was the prevailing rate pre-COVID-19.  Changing the tax bands is however likely to burden more small and medium enterprise and informal taxpayers with higher taxes and negatively impact the government's agenda of promoting businesses in the informal sector.  When you break down the Kes 500,000 per year to the amount per day it translates to Kes 1,369 per day and a turnover tax of Kes 41 per day. The person earning this amount also pays for other licences and permits, pays staff if any, pays rent

Item	Topic	Current Provision of the Bill	CDH's Proposed Amendment	Justification of the proposed amendment
				,takes children to school etc so they may not be comfortable with paying turnover tax. For this reason the bands should start from Kes 1,000,000 not Kes 500,000 as proposed by the Bill.
6.	Digital Asset Tax	<p>The Bill proposes at Section 10 to introduce a tax known as the Digital Asset Tax by inserting Section 12F to the Income Tax Act.</p> <p>It further proposes for the owner of a platform that facilitates exchange or transfer of a digital asset to deduct the tax at a rate of 3% of the gross fair market value of the consideration received at the point of exchange or transfer of a digital asset. The tax is to be remitted within 24 hours after the deduction has been made.</p>	<p>The proposal should be amended to subject the tax on Digital Assets on the gain made from the transfer as opposed to the gross value of the transfer.</p> <p>The requirement to account for the Digital Assets Tax within 24 hours in the proposed section 12(F)(4) is also not practical and should be amended so that a person accounts for the Digital Asset Tax upon receiving the gain on exchange or transfer.</p>	<p>The general principle on taxation of assets is that you tax the gain on transfer otherwise you take away the investment or capital in the asset. This is different from services where you tax the gross transfer value in the invoice.</p> <p>In this regard, the proposed Section 12F of the Income Tax Act should be amended at subsection 5 (b) to read "Income derived from transfer or exchange of a digital asset" means <i>the gain made at the point of exchange or transfer of a digital asset</i>.</p> <p>The Eighth Schedule on Capital Gains Tax (CGT) can be further expanded to apply to Digital Assets.</p> <p>In addition, taxes such as CGT are accounted for when the seller receives payment for the asset or upon completion of transfer. The same principle ought to apply with regard to digital asset tax.</p>

Item	Topic	Current Provision of the Bill	CDH's Proposed Amendment	Justification of the proposed amendment
7.	New Pay As You Earn (PAYE) Band	The Bill proposes at Section 24(b) to amend the Third Schedule of the Income Tax Act by inserting a new tax band for PAYE. The change constitutes a tax rate of 35% on all employment income above Kes 500,000 per month.	We propose for the amendment to be deleted from the Bill.	The imposition of 35% PAYE will negatively impact employees in the specified band by bringing down their net pay. The proposed amendment fails to consider the rising cost of living and increasing inflation. The increase fails to take into account other taxes that persons in this group need to pay such as higher NHIF, higher NSSF and higher National Housing Development Fund (if adopted).

**(b) Value Added Tax Act, 2013**

Item	Topic	Current Provision of the Bill	CDH's Proposed Amendment	Justification
8.	Proposed increase of VAT rate on petroleum products	<p>The Bill proposes at Section 28 to amend Section 5(2) of the Value Added Tax Act, 2013 by deleting paragraph (aa).</p> <p>This proposes to subject petroleum products to 16% VAT instead of the current 8%.</p>	The paragraph be retained as in the Value Added Tax Act, 2013	<p>The proposed change will significantly increase the cost of petroleum products such as kerosene and fuel for motor vehicles. The importance of petroleum products extends to numerous sectors such as transportation and manufacturing industries. The increase in the VAT rate would cause immense negative impacts to the ordinary citizen and the entire population in general. In addition, the increase in the price of petroleum products will also increase inflation as transporters and manufacturers will increase the cost of their products.</p> <p>Further, taxes and levies account for more than 50% of the current price for petroleum products such super petrol and kerosene (see attached appendix). Therefore, increasing additional taxes would heighten the costs further and impact ordinary citizens adversely.</p>



9.	VAT on exported services	The Bill proposes at Section 34(a)(vi) delete paragraph 23 on zero-rating exported services and instead makes exportation of taxable services to be tax exempt under the First Schedule of the VAT Act.	Exported services be zero-rated and not exempt as proposed by the Bill.	Zero-rating exported services would align with the National Tax Policy which speaks to zero-rating such services (attached is an excerpt of the Policy). The same would also ensure that there is alignment with the practice in other countries of the world in terms of zero-rating exported taxable services as opposed to exempting.  Further, the zero-rating should apply from 1 July 2022 because the VAT Act then was not clear on what business process outsourcing meant.
10.	Proposed removal of inputs and raw materials for manufacturing agricultural pest control products and for fertilizers from zero rating	The Bill proposes at Section 34(a)(ii), (iii) to amend the Second Schedule to the Value Added Tax Act, 2013 in Part A by deleting paragraphs 16, 19, 21, 24, and 25.  It proposes to remove the zero rating on: <ul style="list-style-type: none"><li>all inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural</li></ul>	The Paragraphs 16, 19, 21, 24 and 25 should be retained as in the Second Schedule of Value Added Tax Act, 2013.	The proposed amendment to shift inputs and raw materials for manufacturing agricultural pest control products and for fertilizers from zero-rating to exempt is counterproductive in relation to the government's commitment to enhancing the agricultural sector and developing the manufacturing industry in the country.  Exemption, as an incentive, has hidden costs which in the long run undermine the government's intention to enhance the related sector. This is since the manufacturers will either have to absorb

		<p>pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.</p> <ul style="list-style-type: none"> <li>• agricultural pest control products.</li> <li>• transportation of sugarcane from farms to milling factories.</li> <li>• Fertilizers</li> <li>• inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved from time to time by the Cabinet Secretary responsible for Agriculture.</li> </ul>		<p>VAT costs incurred and consequently suffer corresponding profit decreases or recoup their tax cost by factoring the same in the retail price which would in turn disadvantage the consumers by making them bear the non-recoverable VAT burden.</p> <p>Agriculture forms a crucial sector in Kenya's economy by contributing immensely to the country's GDP, accounts for more than half of the country's total exports and further provides the highest employment multiplier.</p>
11.	Removal of plant, machinery and equipment used in the construction of plastics recycling plant from exempt supplies	<p>The Bill proposes at Section 33(a)(xix) to amend the First Schedule to the Value Added Tax Act, 2013 in Section A of Part I by deleting paragraph 107.</p> <p>Proposes to remove plant, machinery and equipment used in the</p>	The paragraph be retained as in the Value Added Tax Act, 2013.	<p>Plastic recycling companies collect waste plastics and transform them into useful products, thereby greatly contributing to reducing plastic waste in the environment. Recycling plastic further promotes sustainability by reducing energy consumption, reducing greenhouse gas emissions, and conservation of natural resources.</p> <p>There currently exists a consensus in the global scope on the need for concerted effort on</p>

		<p>construction of a plastics recycling plant from the list of exempt supplies.</p>		<p>combating climate change. Alleviating environmental pollution by plastics would therefore go a long way in contributing to this noble course.</p> <p>As such, the role played by the plastics recycling plants is significant and the companies need governmental support in every possible way, including tax exemptions. The move to exclude the supply or importation of plants, machinery, and equipment used in the construction of plastics recycling plant is therefore counter-productive in the country's commitment towards combating pollution and climate change generally.</p>
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**(c) Excise Duty Act, 2015**

12.	Excise Stamp Offences	<p>The Bill proposes at Section 40 to amend Section 28 of the Excise Duty Act, 2015 by inserting the following new subsections immediately after subsection (5)-</p> <p>(6) A person commits an offence if that person—</p> <p>(a) defaces or prints over an excise stamp affixed on any excisable goods or package;</p> <p>(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;</p> <p>(c) acquires or attempts to acquire an excise stamp without the authority of the Commissioner;</p>	<p>Either exclude subsections (b), and (e) or rephrase to express criminal intent, as follows:</p> <p>(b) is in possession of excisable goods <b>knowing or having reason to believe that excise stamps have not been affixed on and which have not been exempted from the requirements of this Act or Regulations made under this Act;</b></p> <p>(e) is in possession of an excise stamp <b>knowing or having reason to believe that the same</b> has been printed, made or in any way acquired without the authority of the Commissioner.</p>	<p>The two acts, as expressed in the Bill, impose undue liability to innocent parties, including consumers, who may unknowingly come into contact with either the goods or excise stamps described in the subsections. As such, there should be a distinctive factor between such innocent possession on one hand, and possession resulting from a 'guilty mind' on the other. Otherwise, leaving the two provisions as expressed in the Bill will unduly expose innocent parties to the penalties set out in the provision.</p> <p>See, for example, Section 39(5) of the Excise Duty Act that adds the phrase 'without proper authority'; Sections 97 and 102(1) of the Tax Procedures Act that use the phrase 'knowingly' and 'knows or has reasonable cause to believe' respectively, all aimed to qualify the intention or knowledge of wrongdoing.</p>
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		<p>(d) prints, counterfeits, makes or in any way creates an excise stamp without the authority of the Commissioner;</p> <p>(e) is in possession of an excise stamp which has been printed, made or in any way acquired without the authority of the Commissioner;</p> <p>(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</p> <p>(g) is in possession of, conveys, distributes, sells, or trades in excisable goods which have been affixed with counterfeit excise stamps.</p> <p>(7) A person who commits an offence under subsection (6) is liable, upon conviction, to a fine not exceeding five million shillings or imprisonment for a</p>		
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		term not exceeding three years, or to both.		
13.	Commissioner's discretion on the remission of collected excise duty within twenty-four hours	The Bill proposes at Section 41 to amend the Excise Duty Act, 2015 by inserting the following new section immediately after section 36—  36A (3) The Commissioner may, by notice in the <i>Gazette</i> , require taxpayers in any sector to remit excise duty collected on certain excisable services within twenty-four hours from the closure of transactions of the day.	This proposal should be deleted from the Bill.	Giving the Cabinet Secretary the discretion to require taxpayers in any sector to remit excise duty within twenty-four hours, would, if exercised, subject taxpayers to undue disadvantage. Such a requirement can only be practical if there is sufficient support by facilitative technologies on KRA's end and also on the end of the targeted taxpayers.  Alternatively, if the section is not deleted we should have a notice period of at least one year for the sectors that are not currently subject to accounting for excise duty within 24 hours. Such a notice will facilitate a smooth transition for the taxpayer.
14.	New excise duty on sugar	The Bill proposes at Section 43(a)(vi) to add to the ambit of excise duty sugar excluding sugar imported or locally purchased by registered pharmaceutical manufacturer at Kes 5 per kg in Part 1 of the First Schedule.	This proposed amendment should be deleted from the Bill.	The effect of this proposal is that the cost of sugar will go up and hence become more expensive for ordinary taxpayers. The amendment should be deleted because sugar is a basic commodity in all households and an increase in price would have

				negative financial implications on almost all Kenyans.
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**(d) Miscellaneous Fees and Levies Act**

15.	Commencement of the proposed export and promotion levy provision	<p>The Bill proposes at Section 68 Miscellaneous Fees and Levies Act to introduce a new section as follows:</p> <p><b>7A.</b> (1) There shall be paid a levy to be known as the export and investment promotion levy, on all goods specified in the Third Schedule, imported into the country for home use.</p> <p>The Bill further proposes at Section 72 to amend the Miscellaneous Fees and Levies Act, 2016 by inserting the following new schedule immediately after the Second Schedule (Third Schedule introduced).</p>	Amend Section 1 of the Bill to either include Section 68 or exclude Section 72.	The levy to be introduced is dependent on the goods in the Third Schedule, hence the two are mutually inclusive. Section 1 of the Bill however proposes different commencement dates for the two, i.e., 1 <sup>st</sup> September 2023 for the Third Schedule, and 1 <sup>st</sup> July 2023 for the levy. The two should therefore be reconciled and assigned the same commencement date.
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**(e) Tax Appeals Tribunal Act**

Item	Topic	Current Provision of the Bill	CDH's Proposed Amendment	Justification
16.	Deposit of 20% of the disputed tax before appeal to the high court.	The Bill proposes at Section 36 to amend Section 32 of the Tax Appeals Tribunal Act, 2013 by introducing a mandatory requirement for the payment of 20% of the disputed tax as security by a taxpayer who wishes to file an appeal before the high court.	We propose that this provision should be deleted from the Bill.	This proposal will have the undesirable effect of increasing the costs of appeals. This will consequently hinder access to justice which is a major constitutional tenet in Article 48.  Recently the supreme court in <i>Westmont Holdings SDN BHD v Central Bank of Kenya and 2 Others (Petition 16 (E023) of 2021)[2023]</i> has emphasized that costs including security for costs should not act as an impediment to access justice.

**(f) Tax Procedures Act**

Item	Topic	Current Provision of the Bill	CDH's Proposed Amendment	Justification
17.	Mutual administrative assistance in the recovery or collection of tax claims	The Bill proposes at Section 49 to amend the Tax Procedures Act, 2015, by inserting the following new section immediately after section 32—  32A. (1) The Commissioner may recover or collect a tax claim pursuant	Section 49: The numbering of the subsections should be aligned as subsection (3) has been repeated.	This amendment will ensure consistency in numbering and accuracy of the subsections.



		<p>to an international tax agreement contemplated in section 6A (3).</p> <p>(2) The recovery of the tax claim under subsection (1), shall be in response to a request by the competent authority of a party to the international tax agreement.</p> <p>(3) The request under subsection (2) shall be in respect of a tax claim which forms the subject of the international tax agreement permitting its enforcement in the requesting party and, unless otherwise agreed between the parties, which is not contested:</p> <p>Provided that where the tax claim is against a person who is not a resident of the requesting state, this section shall only apply, unless otherwise agreed between the parties to the international tax agreement, where the claim may no longer be contested.</p>		
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		<p>(3) The Commissioner, in respect of a request under subsection (2)—</p> <p>(a) may apply for an order under section 43(3); and</p> <p>(b) shall issue to the person who is alleged to be liable to pay the tax a notice requiring that person to state, within the period specified in the notice, whether that person admits liability for the amount or a lesser amount.</p>		
18.	Objection to a tax decision	<p>The Bill proposes at Section 57 to amend Section 51 of the Tax Procedures Act 2015 –</p> <p>(a) in subsection (4), by inserting the words “and request the taxpayer to submit the information specified in the notice within seven days after the date of the notice” immediately after the words “validly lodged”</p>	<p>This provision should be amended to give a taxpayer thirty (30) days to submit the information specified in the notice.</p>	<p>The proposed timeline of seven (7) days is not sufficient to allow a taxpayer to provide the information specified in the notice. The limited timeline may infringe on a taxpayer's constitutional right of a fair hearing under Article 50.</p>
19.	General provisions relating to objections and appeals	<p>The Bill proposes at Section 59 to amend Section 56 of the Tax Procedures Act, 2015, in subsection</p>	<p>We propose that the current section should remain as it is in the Tax Procedures Act.</p>	<p>The High Court has discretionary powers of review under the Civil Procedure Rules to allow a person to add new grounds.</p>

		(3), by deleting the words “unless the Tribunal or Court allows the person to add new grounds”.		Further, this amendment infringes on the right to access to justice where there is new and compelling evidence.
20.	Data management and reporting system	<p>The Bill proposes at Section 60 to amend the Tax Procedures Act, 2015, by inserting the following new section immediately after section 59—</p> <p><b>59A.</b> (1) The Commissioner may establish a data management and reporting system for the submission of electronic documents including detailed transactional data relating to those documents.</p> <p>(2) The Commissioner shall notify in writing the persons required to submit electronic documents through the system established under subsection (1).</p> <p>(3) The electronic documents referred to in subsection (2) include electronic invoice returns—</p> <p>(a) of payments made by a person in the ordinary course of business</p>	<p>The new section 59A of the Tax Procedures Act, 2015, should be amended by introducing a new subsection immediately after subsection (4) —</p> <p>The Commissioner shall by public notice, make rules prescribing the procedures for submitting electronic documents and the requirements for an electronic or digital signature of electronic documents.</p>	The rules will address gaps related to <i>inter alia</i> timelines for submitting the documents, procedure of submitting the documents, confidentiality and data protection of the documents shared.

		<p>where goods were exchanged for consideration by a person not employed in the business;</p> <p>(b) for payments made by a person in the ordinary course of business where services were rendered, or in anticipation of services to be rendered, by a person not employed in the business;</p> <p>(c) for payments for services rendered, or in anticipation of services to be rendered, in connection with the formation, acquisition, development, or disposal of a business or a part of it, by persons not employed in the business;</p> <p>(d) for periodical or lump sum payments in respect of a royalty; or</p> <p>(e) for such other commercial or financial transaction as may be designated by the Commissioner.</p> <p>(4) For the purposes of this section—</p>		
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		<p>(a) “transactional data” includes—</p> <ul style="list-style-type: none"> <li>i. the names and addresses of each person to whom a payment was made;</li> <li>ii. where the payment is for services, the amount of the payment specifying whether the payment is a commission of any kind or is for expenses incurred in connection with rendering the services;</li> <li>iii. where the payment is in any form of valuable consideration other than money, the particulars of the consideration; and</li> <li>iv. such other particulars as the Commissioner may specify;</li> </ul> <p>(b) references to payments for services include references to payments in the nature of commission of any kind and references to payments in respect of</p>		
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		<p>expenses incurred in connection with the rendering of services; and</p> <p>(c) references to the making of payments include references to the giving of any form of valuable consideration, and the requirement imposed by paragraph (a)(iii) to state the amount of a payment shall, in relation to any consideration given otherwise than in the form of money, be construed as a requirement to give particulars of the consideration.</p>		
21.	Concurrent civil and criminal proceedings	<p>The Bill proposes at Section 66 to amend the Tax Procedures Act, 2015, by inserting the following new section immediately after section 108—</p> <p>108A. Where any matter under a tax law is in issue in any ongoing criminal case and is also directly or substantially in issue in any pending civil case, that fact shall not be ground for any stay, prohibition or delay of either the criminal or civil case.</p>	<p>Section 108A should be amended by deleting the words "that fact shall not be a ground for any stay, prohibition or delay of either the criminal or civil case" appearing after the words "pending civil case" and substituting therefor with the words " the court shall consider any application for stay or prohibition and may grant such relief as it deems appropriate"</p>	<p>This proposal as is in the Bill will easily lead to the abuse of court processes and subsequently result in infringement of the rights of taxpayers by interfering with their ability to attend to multiple proceedings at the same time.</p>

g) Miscellaneous				
	Topic	Current Provision of the Bill	CDH's Proposed amendment	Justification
22.	Deductions into the National Housing Development Fund	<p>The Bill proposes at <i>Section 76</i> to amend the Employment Act, 2007 by inserting the following new section immediately after section 31A—</p> <p><b>31B.</b> (1) An employer shall pay to the National Housing Development Fund established under section 7 of the Housing Act, in respect of each employee—</p> <p>(a) the employer's contribution at three per centum of the employee's monthly basic salary; and</p> <p>(b) the employee's contribution at three per centum of the employee's monthly basic salary:</p> <p>Provided that the sum of the employer and employee</p>	<p>The introduced section 31B of Employment Act, 2007 should be amended by deleting the word "shall" appearing before the words "pay to the National Housing Development Fund" and substitute therefor with the word "may".</p>	<p>This amendment will make the contribution to be on voluntary basis which is fair especially for small scale earners or employees who already have a house or are already paying for mortgages.</p> <p>Further, the 3% contributions from the employer and the employee were not budgeted for at the contracting point is thus an unpredicted burden. This may result to laying off staff to maintain same costs for staff.</p> <p>Currently, employees are already paying increased NSSF and NHIF and will be subject to additional taxes proposed in the Bill, hence the timing for the National Housing Development Fund is not right.</p> <p>Finally the return promised by the Fund is not specified in the Bill hence creating more uncertainty.</p>

		<p>contributions shall not exceed five thousand shillings a month.</p> <p>(2) The benefits to an employee shall accrue as follows—</p> <p>(a) for employees who qualify for affordable housing the contributions accrue to the employee and shall be used to finance the purchase of a home under the affordable housing scheme; or</p> <p>(b) for employees who are not eligible for affordable housing, upon the expiry of seven years from the date of the start of making the contributions, or after the attainment of retirement age, whichever is earlier—</p> <p>i. a transfer of their contributions to a retirement benefits scheme or pension scheme</p>		
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		<p>registered with the Retirement Benefits Authority;</p> <p>ii. a transfer of their contributions to any person registered and eligible for affordable housing under the National Housing Development Fund; or</p> <p>iii. a transfer of their contributions to their spouse or dependent children; or</p> <p>iv. to receive their contributions in cash:</p> <p>Provided that contributions paid out in cash shall be included in the contributor's taxable income for the year and be subjected to tax at the prevailing rates.</p> <p>(3) All contributions shall get a return based on the return on the Fund.</p> <p>(4) The employer shall remit both employee and employer contributions to the National Housing Development Fund</p>		
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		<p>before the ninth day of the following month after the deduction was made.</p> <p>(5) The Cabinet Secretary responsible for matters relating to housing, in consultation with the Cabinet Secretary responsible for matters relating to finance, shall make Regulations prescribing the qualifications to participate in the affordable housing scheme.</p> <p>(6) This section shall become effective on the date the Regulations made under subsection (5) come into operation.</p>		
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# PRESS RELEASE

## MAXIMUM RETAIL PETROLEUM PRICES IN KENYA FOR THE PERIOD 15<sup>TH</sup> MAY 2023 TO 14<sup>TH</sup> JUNE 2023

In accordance with Section 101(y) of the Petroleum Act 2019 and Legal Notice No.192 of 2022, the Energy & Petroleum Regulatory Authority (EPRA) has calculated the maximum retail prices of petroleum products which will be in force from 15<sup>th</sup> May 2023 to 14<sup>th</sup> June 2023.

Taking into account the weighted average cost of imported refined petroleum products, the changes in the maximum allowed petroleum pump prices in Nairobi are as follows: **Super Petrol, Diesel and Kerosene increase by Kshs.3.40 per litre , Kshs.6.40 per litre and Kshs.15.19 per litre respectively.** The subsidy on Diesel and Kerosene has been removed.

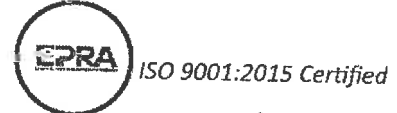
The prices are inclusive of the 8% Value Added Tax (VAT) in line with the provisions of the Finance Act 2018, the Tax Laws (Amendment) Act 2020 and the revised rates for excise duty adjusted for inflation as per Legal Notice No. 194 of 2020.

The average landed cost of imported **Super Petrol** increased by 8.63% from US\$666.51 per cubic metre in March 2023 to US\$724.01 per cubic metre in April 2023; **Diesel** decreased by 2.51% from US\$705.82 per cubic metre to US\$688.07 per cubic metre while **Kerosene** decreased by 1.13% from US\$707.53 per cubic metre to US\$699.54 per cubic metre.

The changes in the landed costs are summarized in the table 1.

Table 1: Summary of Landed Costs

PRODUCT	MARCH 2023	APRIL 2023	CHANGE
Super Petrol (US\$/Cubic Metre)	666.51	724.01	+8.63%
Diesel (US\$/Cubic Metre)	705.82	688.07	-2.51%
Kerosene (US\$/Cubic Metre)	707.53	699.54	-1.13%



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## ANNEX III

Breakdown of the costs of Super Petrol (PMS), Diesel (AGO) and Kerosene (DPK) in Nairobi: 15th May - 14th June 2023				
Cost Item	Cost Description	Super Petrol	Diesel	Kerosene
		KShs/Litre	KShs/Litre	KShs/Litre
<b>Landed Cost (a)</b>	Weighted Average cost for all imports	101.83	99.83	98.04
Pipeline Transport (Msa-Nrb)	Pipeline (100% PMS, AGO & IK)	2.53	2.53	2.53
Road Transport (Msa-Nrb) - Bridging	Road (0% PMS, AGO & IK)	0.00	0.00	0.00
Pipeline Losses	Pipeline (0.25%)	0.10	0.09	0.09
Depot Losses	0.5% PMS; 0.3% For DPK & AGO	0.76	0.42	0.40
Delivery within 40kms of Nrb	Delivery to retail stations	0.54	0.54	0.54
<b>Storage and distribution (b)</b>		3.93	3.58	3.56
Importers Margin	Wholesale	4.20	4.17	4.17
Dealers Margin	Retail Investment & Operating Margin	8.19	8.19	8.19
<b>Oil marketing companies margins (c)</b>		12.39	12.36	12.36
Excise Duty	Tax	21.95	11.37	11.37
Road Maintenance Levy	Levy	18.00	18.00	0.00
Petroleum Development Levy	Levy	5.40	5.40	0.40
Petroleum Regulatory Levy	Levy	0.25	0.25	0.25
Railway Development Levy	Levy	1.96	1.85	1.88
Anti-adulteration Levy	Levy	0.00	0.00	18.00
Merchant Shipping Levy	Levy	0.03	0.04	0.03
Import Declaration Fee	Levy	3.43	3.25	3.30
Value Added Tax (VAT)	Tax	13.53	12.47	11.94
<b>Taxes and levies (d)</b>		64.55	52.63	47.17
<b>Retail Prices in Nairobi (a) + (b) + (c) + (d)</b>		182.70	168.40	161.13
<b>Summary</b>		<b>Super Petrol</b>	<b>Diesel</b>	<b>Kerosene</b>
		<b>KShs/Litre</b>	<b>KShs/Litre</b>	<b>KShs/Litre</b>
Products Costs (a)		101.83	99.83	98.04
Distribution and storage Costs (b)		3.93	3.58	3.56
Margins (c)		12.39	12.36	12.36
Taxes & Levies (d)		64.55	52.63	47.17
<b>Retail Prices in Nairobi</b>		<b>182.70</b>	<b>168.40</b>	<b>161.13</b>

Appendix 2

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REPUBLIC OF KENYA

THE NATIONAL TREASURY AND ECONOMIC PLANNING

# NATIONAL TAX POLICY

THE NATIONAL ASSEMBLY PAPERS (A/D)	
DATE: 27 APR 2023	DAY: THURSDAY
TABLED BY: LOM (Hon. Kimani L'chung'u)	APRIL 2023
CLEAR AT THE TABLE: Esther Nguny'o	

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- ii. In the computation of taxable income from a business, deduction shall be allowed in respect of any expenditure incurred wholly and exclusively for the purposes of generating that income;
- iii. The capital deductions allowable shall not exceed 100 percent of the actual cost of the investment or the asset.
- iv. There shall be a single corporate tax rate
- v. No preferential tax rate shall be granted.
- vi. Despite paragraph (v) above, if a preferential rate is granted for specific government policy objectives, the tax rate shall not be lower than that 50% of the general rate of corporation tax;
- vii. Exemption, if any, from income tax shall be provided in the Income Tax Act only;
- viii. Repatriated profits for non-residents operating in Kenya through permanent establishment shall be subjected to tax at a rate equivalent to that charged to dividends paid to non-residents;
- ix. There shall be a simplified method of taxation of income in cases of inherent difficulty in collection and tax administration on some sectors;
- x. There shall be a withholding tax on payment for some services and some income such as dividends, royalties, and interest payment;
- xi. Allowable investment allowance shall be spread over the period specified under the Income Tax Act.
- xii. The method of calculating the investment allowance shall be the straight-line method.

#### **4.6 Value Added Tax**

VAT shall be guided by the following guidelines:

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- i. The tax base for VAT shall be domestic consumption of all goods and taxable services.
- ii. Exemption, if any, from VAT will be only on consideration of costs compliance and administration costs;
- iii. VAT shall be charged at all stages of production and distribution, including the retail stage.
- iv. There shall be a single general rate of VAT.
- v. No exemption or lower-than-standard rates shall be provided under VAT on distributional consideration.
- vi. VAT shall be destination-based: that is VAT shall be charged on all goods and taxable services in the country of destination or consumption, not the country of origin or production.
- vii. All exports whether goods or taxable services shall be zero-rated
- viii. All imports whether goods or services shall be charged VAT at par with domestically produced goods and taxable services.
- ix. The criterion for determining whether a business firm or other entity is liable to VAT will be VAT registration threshold which will be determined on the basis of cost-benefit of collecting VAT from small firms or entities.
- x. The VAT threshold shall be reviewed from time to time to align it with the prevailing economic situation;
- xi. Voluntary registration for VAT may be allowed even where a person has not met the prescribed threshold; and
- xii. Non-resident suppliers of digital services shall be registered for VAT irrespective of the threshold.

#### **4.7 Excise Duty:**

Excise Duty shall be guided by the following guidelines:

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