Institute of Certified Public Accountants of Kenya

SUBMISSION

ON

THE FINANCE BILL, 2024

May 2024

1.0 INTRODUCTION

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants with the mandate to develop and regulate the accountancy profession in Kenya. The Institute is further mandated under Section 8 of the Accountants' Act of 2008 to advise the Cabinet Secretary for Finance on matters relating to governance and accountability in all sectors of the economy. The Institute is dedicated to enhancing its contribution and that of its members to the national economic growth and development agenda. It has been instrumental in making contributions that shape public financial management in Kenya.

The Finance Bill, 2024, proposes measures the Government intends to utilize in raising additional revenues to finance the FY 2024/2025 Budget estimates. These measures target to raise an additional Kshs. 302 billion in funding the Kshs. 4.2Trillion proposed budget. Total revenue is targeted to increase by 16.2% to Kshs 3.4 Trillion in FY'2024/25 up from Kshs 2.9 Trillion in FY'2023/24. This target is poised to Increase Revenue to GDP from 16.2% of GDP to 18.6% of the GDP in line with the objectives under the Medium-Term Revenue Strategy and in support of the Government's economic blueprint embedded in the Bottom-Up-Economic Transformation Agenda (BETA). The Institute is in support of this objective and appreciates the consideration of a number of administrative amendments deliberated between the Institute, the National Treasury and the Kenya Revenue Authority, some of which are reflected in the Finance Bill, 2024.

REVENUE FORECAST

According to the Kenya Revenue Authority (KRA's) 8th Corporate Strategic Plan, the focus over the Eighth Plan period will be to implement the Tax Base Expansion (TBE) strategy through recruitment of new taxpayers and additional obligations. The target for new taxpayers will be in real estate, businesses in the Turnover Tax (ToT) regime, registered companies, agriculture sector, professionals, High Net-Worth Individuals (HNWI) and the digital economy. These are expected to raise the number of active taxpayers from 6.1 million to 8.2 million, implying an additional 2 million new taxpayers, including from the informal sector.

KRA is expected to collect Kshs.6,831 billion over the Medium Term. The core revenues are the Exchequer Revenues, Railway Development Levy (RDL) and the Road Maintenance Levy Fund (RMLF). The revenues are expected to grow by an annual average of 16.9% over the Plan period compared to 11.2% projected for nominal GDP.

However, it is important to note that the performance of tax revenue collection has consistently remained below the set targets, largely on account of unfavorable business environment. The Institute also supports data driven revenue projections to address the risks of over-ambitious targeting. According to the end of March 2024 Exchequer Issues, KRA had only managed to collect Kshs 1.5 Trillion in tax revenue, which is 82.0% of the prorated Kshs 1.9 Trillion, and 61.5% of the FY'2023/24 estimates of Kshs 2.5 Trillion.

POLICY CONSIDERATIONS

In the year 2023, the government developed the Medium-Term Revenue Strategy (MTRS), a robust domestic resource mobilization strategy geared towards narrowing the revenue gap. The MTRS provides a framework for tax reforms aimed at boosting domestic revenues. Further, through the National Treasury and the National Assembly, a National Tax Policy was developed to create an efficient and fair tax system that promotes equity in tax administration and predictable tax environment for business to operate. This policy framework is essential not only for revenue mobilization but also, a critical step in ensuring predictability, certainty, commercial responsiveness, competitiveness and stability of our tax regime.

The Institute is notes with concern, the inconsistency between on the proposals in the Finance Bill, 2024 and the National Tax Policy and the MTRS. For instance, the Tax Policy anticipated an environment where tax laws will be introduced to last for a period of five years to enable policy makers evaluate and analyse the impact of tax changes, yet some of the provisions introduced and passed in the Finance Act, 2023 are already being amended and repealed. These frequent changes go against the canon of stability and predictability in taxation which hampers business. Further the MTRS provides for a percentage reduction of the VAT rate, currently at 16%. The Institute urges the National Assembly and the National Treasury to strive for coherence and alignment of tax proposals and the MTRS to engender predictability and stability in tax laws.

Specifically, the Institute notes the following policy concerns:

1. **Delayed implementation of the National Tax Policy**: The Institute and other stakeholders were heavily involved in submitting proposals on the Draft National Tax Policy. The Institute reiterates its concern that frequent changes to tax laws violate the canon of taxation and principles of certainty and simplicity.

   The more changes that are made, the greater the difficulty taxpayers, investors, practitioners and government tax administrators have in complying with and understanding the tax consequences of transactions. Also, it becomes more difficult for tax agencies to issue guidance in a timely manner when there are hundreds of tax law changes every few years.
2. **Urgent need for fiscal consolidation**: Fiscal consolidation entails enhancing revenues as proposed in the Finance Bill, 2024 or reducing and rationalizing expenditure to fit within the available resource envelop. More often however, fiscal consolidation employs both strategies to work towards a balanced budget. Over the years, Kenya has expanded the items subject to tax, particularly those subject to excise duty, going over and above addressing the negative externalities associated with some of the goods and services subject to excise duty, such as financial services and internet. The Institute urges the government to

explore ways of rationalizing expenditure, including deferral of capital projects and review of priority expenditure in order to reduce expenditure and align it to projected exchequer revenues.

Moreover, measures such as – complete unbundling of functions to free funds from duplicated roles and functions at National and County level – finance follows function principle; lowering of transfers to state owned enterprises, cleaning and regular audit of the payroll register, keeping wages, salaries and allowance adjustments in line with the PFM Act and recommendations from the Salaries and Remuneration Commission (SRC) could be considered. Further, there is need for Parliament to assess the uptake and impact of already established austerity measures by the Executive Office of the President.

3. **Over-reliance on a small pool of taxpayers**: Kenya has continued to place reliance on a small pool of taxpayers, largely drawn from the formal sector. According to KRA, only 6.3 million taxpayers including corporate entities filed their 2022 tax returns by midnight on June 30th 2023. This implies that out of a population of about 52 million people, about 15% of the population is contributing to income tax. As such, the tax burden is not shared fairly as envisaged under Article 201(b)(i) of the Constitution.

   Further, the increased deductions on the gross emoluments of salaried employees continue to reduce the disposable income on this segment of Kenyans exacerbating the cost of living and negatively impacting demand and indirect tax revenues. Not only has this resulted in tax fatigue for this pool of taxpayers, it also contravenes the tax maxim of Equity and Fairness.

4. **Sealing revenue leakages and avenues of corruption**: Revenue leakages, corruption and misappropriation of resources leads to a destruction of taxpayer morale and tax apathy. Such revenue losses also make it difficult for government to provide essential services commensurate to the taxes that Kenyans pay. Revenue leakage is caused by various reasons such as complicated tax systems, discretionary power on exemptions, as well as a dampened morale to pay taxes occasioned by the culture of corruption. There's a need to:
   - **a.** Review the penalty system on tax evasion.
   - **b.** Develop a change management strategy to address income tax matters.
   - **c.** Leverage on simplified technological solutions to enhance integration of taxpayer information systems.

   As the government strives to enhance collection through taxes, the citizenry are worried on the commensurate service delivery. The Institute urges all public sector players to enhance prudent utilization of public resources, enhance accountability and openness.

The Institute therefore recommends that all three arms of government work together to reduce revenue leakages and avenues of corruption. Not only will this have a positive ta morale impact, but it will also lead to greater availability of resources to execute government priority projects thus supporting the governments transformation agenda as enshrined in BETA.

WELCOME PROPOSALS IN THE FINANCE BILL, 2024

The Institute commends the National Assembly and the National Treasury on a number of progressive proposals contained in the Finance Bill, 2024 which will go a long way in facilitating Kenyans in these tough economic times:

a) The proposal to enhance tax-free pension contributions from the current Kshs. 20,000 per month to Kshs. 30,000 per month. This is all the more worthwhile since these limits were last reviewed in 2005;

b) The proposal to exempt pensions from tax;

c) The enhancement of meal benefit thresholds from Kshs. 48,000 per annum to Kshs. 60,000 per annum, particularly in view of the high cost of living;

d) The enhancement of the non-cash benefit threshold from Kshs. 36,000 per annum to Kshs. 48,000 per annum; and

e) The introduction of affordable housing deduction and social health insurance fund deduction to cushion employees from these additional levy deductions.

f) Transfer of business as a going concern is now VAT Exempt implying that transfer of businesses will be less costly.

Notwithstanding, the Institute has developed the following proposals on the Finance Bill, 2024 for further consideration by the National Assembly geared towards enhancing the economy and fostering investments in Kenya:

2.0 SUMMARY OF ICPAK SUBMISSION ON THE FINANCE BILL, 2024

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
	A. INCOME TAX			
1.	Clause 4 The Bill proposed to amend Section 4A (1) (ii) of the ITA to Reduce the time period for deductibility of deferred realized foreign exchange losses from the current 5 years to 3 years	Reduction of the period to 3 years is not good for business that have to rely on foreign debt to remain afloat	Drop the proposal to amend Section 4A(1) (ii) of the ITA	▪ The reduction of time for deductibility of deferred realized foreign exchange losses will be problematic for investors. ▪ Long-term investment decisions are often made in view of stable tax policies. Considering that the five-year period only took effect 01 July 2023, following the enactment of the Finance Act, 2023, the sudden change in law negates financial planning and investment decisions made by investors last year. ▪ This could potentially cause financial instability, unexpected tax liabilities and discourage investment both in the short and long run, reducing Kenya's competitiveness. The Government should ensure stability of tax policies and give enacted legislation time to achieve their intended objective. ▪ Further, the high volatility of the current exchange rate and the shortened deferred period for claiming realized forex losses may strain businesses involved in cross border transactions. As a result, such businesses may suffer an additional tax burden in comparison with the counterparts who only engage in local currency transactions.

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2.	Clause 5 The Bill proposes to amend the ITA by introducing a new section 4C that will allow payment received by a person from a public entity for supplying goods be deemed to be income of the person for the year of income in which the payment is received.	The restriction to goods only is discriminatory to the supplier of services to the same public entities	We recommend that the words ***"and services"*** are inserted between goods and shall. The new proposal will read as follows: - *"The Payment received by a person from a public entity for supply of goods and services shall be deemed to be the income of the person for the year of income in which the payment is received"*	Taxpayers supplying goods to public entities have faced challenges where tax is paid, while payment for the goods (and services) supplied is received much later, in a different year of income from the year of income of supply, which has inflicted severe pain on persons doing business with public entities. Inclusion of suppliers of services will eliminated the perceived bias and discrimination.
3.	Clause 6 The Bill proposed to amend Section 5 (4) (fa) of the ITA to provide exemption of amounts paid or granted to a public officer to reimburse an expenditure incurred for the purpose of performing official duties notwithstanding the	The provision is likely to be abused and may lead to tax leakage	Delete the proposal.	As currently worded, the proposal is prone to abuse and may lead to serious leakage of payroll taxes. It is also not clear why the proposed amendment is only applicable to public officer and not applied uniformly to all employees. We take note that the same proposal had been introduced under the Finance Bill 2023 but was dropped by the National Assembly. For the similar reasons as those that were considered last year, we request the Committee to drop this proposal

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	ownership or control of the assets purchased.			
4.	Clause 8 The Bill proposes to repeal the digital service tax regime and introduce a new tax known as "**Significant Economic Presence Tax (SEPT)**", which shall apply on the income derived by a non-resident person from the provision of services through a digital marketplace in Kenya. The Bill proposes a rate of 30% of the taxable profit. The taxable profit shall be deemed to be 20% of the gross turnover. In effect, the proposed rate translates to 6%.	Issues of concern are as follows:- • SEPT rate (effectively, 6% of the turnover) is considerably high compared to the DST rate, currently 1.5%. • To ensure that taxation is pegged on significant presence, there is merit in introducing thresholds	Amend the proposed Section 12E (3) of the ITA by deleting the word 'twenty' and substituting therefor the word "five". Specifically, the proposed Section 12E (3) reads as follows: *'For Purposes of computing the tax under subsection (1), the taxable profit of a person liable to pay the tax shall be deemed to be five per cent of the gross turnover.'* For the threshold, we recommend SEPT is only applicable where the income of the non-resident person exceeds KES 8 million or its equivalent in other	Setting deemed profit at 5% of the turnover of a non-resident person will translate to an effective tax rate 1.5% of gross turnover. This aligns with the current DST rate. Considering that SEPT, as currently, proposed is not different from the DST, the non-resident persons impacted by the change will not be hard hit by a steep increase in the tax rate. The reasonable rate will create a tax environment that is fair, competitive, and conducive for economic growth while ensuring digital businesses operating within Kenya contribute reasonably to the national coffers. A reasonable tax rate will enhance Kenya's digitally competitiveness and attract investors while ensuring that Kenya adopts international best practice. ▪ For SEPT, it is expected that countries should set a threshold to mark the trigger of significant economic presence e.g. Nigeria and India have set up threshold below which non-resident persons accruing or deriving income from their country will not trigger SEPT. This in line with international best practice and the Pillar 1 and 2 rules.

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			currencies during the financial year	
5.	Clause 9 The Bill proposes to introduce Motor Vehicle Tax (MVT) at the rate of **2.5%** of the value of the motor vehicle capped to a maximum amount of KES 100,000 and a minimum of KES 5,000. MVT is to be collected by insurers and remitted to the KRA within 5 working days after issuing a motor vehicle insurance cover. Insurers who fail to collect the tax are liable to pay penalty equivalent to **50% of the uncollected tax** and the **actual amount** of the uncollected tax.	MVT is tax tantamount to taxing capital and is likely to have significant negative ripple effects on the economy	We recommend that Clause 9, the part is seeking to introduce MVT by way of introducing Section 12H, be deleted.	Our recommendation is premised on the following reasons; - a) The motor vehicle industry is already taxed through other forms of taxes including, vehicle import taxes which are almost 50% of the value of the car, taxes on petroleum products including levies such as Road Maintenance Levy (RDL), Petroleum Development Levy (PDL), Petroleum Regulatory Levy (PRL), Railway Development Levy (RDL) among other levies b) The tax will negatively impact on insurance penetration which is already very low in Kenya. This will have negative ripple effects to other facets of the economy. c) Imposing MVT on public service vehicles is likely to lead to increase cost to *Mwananchi* as the owners of the motor vehicles are likely to pass the burden to M*wananchi*
6.	Clause 23 (a)	The taxation of amateur sporting associations may	Delete the proposal.	Many amateur sporting associations do not operate for profit but operate to promote sporting activities

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	The Finance Bill proposes to remove the tax exemption of income, other than income from investments, of amateur sporting associations.	cripple sporting activities in the country.		within the country and serve the community. Additionally, Kenya's sporting sector has not fully developed hence introducing tax may undo the progress made so far. Further, failing to tap into youth talent may exacerbate the unemployment crisis in Kenya. In contrast, the Government should invest in youth sporting activities in order to create a positive impact within communities by providing recreational opportunities. This, in turn, will contribute to youth development and other economic and social benefits.
7.	Clause 23 The Bill proposes to remove the tax exemption of capital gains relating to transfer of title of immovable property to a family trust	The transfer of titles of immovable property to a family trust is not a capital gain since the beneficial ownership does not change.	Delete the proposal.	Family estates are typically established for estate planning and asset protection. They are not commercial transactions but rather a means to manage and protect family wealth. Therefore, applying several taxes on these bodies may negatively impact the social and economic welfare for many families. Further, when property is transferred to a family trust, the beneficial ownership does not change but remains with the family. As a result, applying tax on the transfer of title of an immovable property to a family trust may result in double taxation.
8.	Clause 25	Introduction of withholding tax on this category of bonds may make them unattractive and	We recommend that both the resident and	Our recommendation are based on the following justification:

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	The proposes to introduce withholding tax ("WHT") on interest income arising from bonds used to raise funds for infrastructure and other social services. The resident rate shall be 5% while the non-resident rate shall be 15%.	potentially drive away Foreign Direct Investment (FDI)	non-resident rates are harmonized at 5%. In addition, the withholding tax deducted should be final tax.	a) The proposed amendments are likely to mitigate the risk of making this category of bonds unattractive. b) The high tax rate is likely to discourage investment. This will have significant ramifications to social and economic benefits considering that the IFB projects have led to improved public services such as better energy supply, water systems and transportation networks. If enacted, the new laws may delay Kenya's development goals as envisioned in Kenya's Vision 2030 of transforming the country into an industrialized middle-income country.
9.	Section 25 (b) (i) Taxation of real estate companies involved in construction of residential units *(Paragraph 2 (i) of the Third Schedule to the Income Tax Act)*	The Bill proposes to repeal the preferential income tax rate of 15% to companies that construct 100 residential units.	We recommend for the following new proviso to be added to **S**ection 25 (b) (i) of the Finance Bill, 2024: Provided that- *''Fifteen percent will continue to apply to a company that had received construction approval from the County Government before the*	Certainty is a key tenet in taxation. Investors who had already commenced construction and sale of residential units on the expectation that they will enjoy the reduced corporate income tax rate will incur losses since the determination of the selling price was premised on the availability of the reduced corporate income tax rate of 15%. The inclusion of a transition clause will ensure that the Government achieves its objective of repealing the incentive but also provide certainty for investments which are already underway. This is critical in earning the trust of investors on predictability and certainty of tax laws.

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			commencement of this proviso."	
10.	Clause 25(b)(iii)(C) The Bill proposes to scrap the KES 24,000 WHT threshold for management or professional fees or training fees	The administrative burden of this proposal is too taxing.	Delete the proposal.	In recent years, the Government has increased taxpayers' administrative duties which has strained most businesses. By requiring taxpayers to withhold taxes on all qualifying payments, businesses will have to monitor and track their payments for tax purposes. This increased cost for tax compliance may incentivize taxpayers to evade taxes. Additionally, this proposal may keep low-income earning businesses in a perpetual refund position due to the low margins earned and chock their cashflow. Consequentially, small business may find it difficult to survive in an already challenging economic environment.
11.	Clause 25 (b) (ii) (C) (u) & Clause 25 (b) (iii)(F)(n) The Bill proposes to introduce WHT rates for payments made by a public entity for supply of goods at 3% and 5% for residents and non-residents.	The WHT rate of 3% and 5% for residents and non-residents is too steep, considering the low margins earned by merchants.	Recommend the WHT for payments made by a public entity for supply of goods from 3% and 5% to 1% and 2% for resident and non-residents, respectively. We propose the deleting the word *"five"* and substituting therefor the word *"two"* in the proposed Paragraph 3 (u)	Most merchants earn low margins from the sale of goods to public entities. It's our view that the proposed withholding tax rate for payments made by a public entity for supply of goods should be reduced from 3% and 5% to 1% and 2% for resident and non-residents, respectively. This will enhance cash flow for businesses, especially for small and medium enterprises ("SMEs") and allow them to reinvest in operations, manage expenses and pursue growth opportunities. Additionally, the reduced withholding tax rates will

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			of the Third Schedule to the ITA. We propose the deleting the word *"three"* and substituting therefore the word *"one"* in the proposed Paragraph 5 (m) of the Third Schedule to the ITA.	reduce refund claims for such low-margin businesses which been a headache for the KRA.
12.	Clause 25 (b) (ii) (C)(v) The Bill proposes to impose WHT rate for income deemed to have accrued in or derived by non-residents from digital marketplaces.	The WHT rate of 20% is too steep. This may have repercussions on Kenya's competitiveness in the global digital economy.	Amend the proposed withholding tax rates for income deemed to have accrued in or derived from a digital marketplace for non-residents from 20% to 10%. We propose the deleting the word *"twenty"* and substituting therefore the word *"ten"* in the proposed Paragraph 3 (u) of the Third Schedule to the ITA.	Requiring owners or operators of digital marketplaces or platforms to withhold taxes at 20% on the payments made to non-resident is quite steep and may have repercussions on Kenya's competitive digital economy. We recommend that the Government revises the proposed rate downwards to 10% to encourage foreign investment and growth in this sector.
	B. VAT			

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13.	**Paragraph 30** amending section 12 of the VAT Act by introducing a new subsection 5 - The Time of supply for exported goods shall be the time when the registered person is in possession of the required export confirmation documents	The law is not clear on the documents required.	Amend the section to read: *The Time of supply for exported goods shall be the time when the registered person is in possession of:* ***a) the bill of lading, airway bill or road manifest;*** ***b) C17B duly passed in the customs system; and*** ***c) Confirmation of exit from the Customs system***	To avoid disputes on whether goods have been exported, the law should clearly state whet export documentation is.
14.	Paragraph 31(a)(i) and (ii) deleting Section 17(5(c) and (d) of the VAT Act	WHVAT should be available as an automatic credit so long as the WHVAT agent has remitted the tax to KRA.	***Delete Section 31((a)(i) and (ii) of the Finance Bill, 2024.***	The proposed repeal of the provisions will negatively impact taxpayers who accumulate VAT credit as a result of withholding VAT. Such deletion denies such taxpayers a chance to seek a refund of VAT by virtue of being withheld at source. Businesses that largely deal with zero-rated supplies will be adversely impacted by the exclusion of their ability to seek a VAT refund.

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15.	**Paragraph 34 (a) (i) (F)** **Deletion of Paragraph 62 of the 1st Schedule to the VAT Act, 2013**	The Bill proposes to repeal the exemption from VAT of taxable supplies for use in construction of tourism facilities, recreational parks, convention, and conference facilities.	Retain Paragraph 62 of the 1st Schedule to the VAT Act, 2013	The proposal counters Government's efforts to encourage investment in the tourism sector. This is despite intense efforts by the Government to promote the growth of the sector. Kenya is heavily reliant on international tourism as a source of foreign exchange. Additionally, domestic tourism has been on an upward trajectory and the proposal may slow down the growth of the sector.
16.	**Paragraph 34 (a) (i) (G)** **Deletion of Paragraph 63 of the 1st Schedule of the VAT Act**	The Bill proposes to delete the exemption from VAT of taxable goods and services for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health.	Retain Paragraph 63 of the 1st Schedule to the VAT Act, 2013	Healthcare is a critical aspect for the country and the cost of accessing the same is heavier on the common wananchi. The Government has been on the forefront in a bid to improve access and the quality of healthcare in the country. The increase in non-communicable diseases in the recent past has been a major challenge for most Kenyans due to the high cost of accessing treatment. To support the Government's agenda on health the exemption should be retained to encourage private players to invest in the sector at a slightly lower cost.
17.	**Section 34 (b) (i)**	The Bill proposes to change the VAT status of the following	Delete Section 34 (b) (i) of the Finance Bill, 2024	The financial sector plays a critical role in facilitating trade and access to credit.

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	Standard rating of various financial services by deleting the services from the First Schedule to the VAT Act, 2013 *(Paragraph 1, Part II of the First Schedule of the VAT Act)*	financial services from exempt to taxable supplies: • Issuing of credit cards and debit cards • Telegraphic money transfer services • Foreign exchange transactions, including the supply of foreign drafts and international money orders; • Cheque handling, processing, clearing and settlement, including special clearance or cancellation of cheques; • Issuance of securities for money, including bills of exchange, promissory notes, money and postal orders; • Assignment of a debt for consideration The provision of financial services on behalf of another on a commission basis		The proposed introduction of VAT on selected financial services will lead to a substantial increase in the cost of accessing financial services. Notably, a few years ago the Government introduced excise duty on all fees and commissions that are charged by licensed financial institutions. The same is currently being levied at the rate of 15% but the Finance Bill 2024 is proposing an increase to 20%. The proposed imposition of VAT will imply that consumers will be required to pay 20% excise duty plus 16% VAT on the affected services. Notably, the tax base of VAT includes excise duty and hence the ultimate cost to consumers is more than excise duty plus VAT. This is likely to discourage Kenyans from using the formal financial systems which will erode the gains that we have made over the years in growing the update of financial services. This is in addition to watering down gains made towards financial inclusion.

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18.	**Section 34 (b) (ii) of the Finance Bill, 2024** **Imposition of VAT on insurance services other than insurance and insurance premium**	The Bill proposes to repeal the current provision that provides for exemption from VAT of insurance services other than those related to: i. Management and related insurance consultancy services ii. Actuarial services iii. Services of insurance assessors and loss adjusters	Deletion of Section 34 (b) (ii) of the Finance Bill, 2024	Insurance penetration has remained considerably low in Kenya. The proposed introduction of VAT on all auxiliary insurance services will increase the final cost of accessing insurance services since insurance companies will pass on the associated VAT to consumers. This is because they will not claim the related VAT since insurance premiums which is their main income will be an exempt service. The exemption of insurance services should be retained until the uptake of insurance services has grown in the country.
19.	*Section 35 (a) of the Finance Bill, 2024*	The Bill proposes the deletion of Paragraph 13A of the Second Schedule to the VAT Act which zero-rates the supply of ordinary bread.	*Section 35 (a) of the Finance Bill, 2024*	The introduction of VAT on ordinary bread will have a ripple effect on the economy. First, the industry employs a substantial number of people through forward and backward linkages. Secondly, the raw materials are supplied by farmers who are largely the common mwananchi. Lastly, the increase in the cost of bread will also have a bigger impact on the common mwananchi who generally spend a larger portion of the income on food.

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C. EXCISE DUTY				
20.	EXCISE ACT CLAUSE 39 PART II	Repealing of Section 14 of the Excise Act that reads as follows. 14. Relief for raw materials Where excise duty has been paid in respect of excisable goods imported into, or manufactured in Kenya by a licensed manufacturer and which have been used as raw materials in the manufacture of other excisable goods (hereinafter referred to as "finished goods"), the excise duty paid on the raw shall be offset against the excise duty payable on the finished goods.	• Re-introduction of section 14 of the Excise Act and an amendment to include offset of excise tax paid on packaging materials used for manufacture. • Proposed new section: *Where excise duty has been paid in respect of excisable goods imported into, or manufactured in Kenya by a licensed manufacturer and which have been used as raw materials and packaging materials in the manufacture of other excisable goods (hereinafter referred*	• Deletion of the provision deters manufacturers to offset the excise duty incurred on raw materials against the excise duty levied on final goods or services delivered to consumers. This will result in increases in prices of goods and services hence driving up inflation. • Inability to claim excise on raw materials will result into cashflow constrains for businesses and reduced investments by manufacturers therefore inhibiting growth in the sector and this will further have a ripple effect on SMEs and individuals. • The proposal is in contravention of international best practice on consumption taxes. The OECD guidelines on consumption taxes that reads as follows: "The system is based on tax collection in a staged process, with successive businesses entitled to deduct input tax on purchases and account for output tax on sales. Each business in the supply chain takes part in the process of controlling and collecting the tax, remitting the proportion of tax corresponding to its margin i.e. on the difference between the VAT paid out to suppliers and the VAT charged to customers. In general, OECD countries with VAT impose the tax at all stages and normally

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			to as "finished goods"), the excise duty paid on the raw shall be offset against the excise duty payable on the finished goods.	allow immediate deduction of taxes on purchases by all but the final consumer.'' • The proposal further and contravenes policy guidelines as enshrined in the National Tax Policy and the Medium Term Revenue Strategy. • The removal of section 14 of the Excise Act will subject manufacturers to double taxation. The input excise will be included as part of the cost of the final product which will then be subject again to excise and VAT (on a base that includes excise tax). • Amendment of section 14 of the Excise Act to include packaging material will accord taxpayers a relief on excise tax paid on excisable packaging material with the impact of accelerating investment and economic recovery.
21.	New proposal for addition to the Finance Bill 2024	Section 47(a)(v) of the Finance Act 2023 increased the excise rate on imported glass bottles from 25% to 35%. The excise tax was introduced a 25%excise duty on imported glass bottle jars (excluding imported glass bottles for	In the proviso, exclude imported glass bottles imported from COMESA Regions	• The excise tax on glass is in violation of COMESA Treaty provisions on most favoured nation treatment and provisions that prohibits Member States from enacting legislation or applying administrative measures which directly or indirectly discriminate against the same or like products of other Member States.

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		packaging of pharmaceutical products, or glass originating from within the EAC) through the Business Law (Amendment) Act, 2020.		
22.	EXCISE ACT CLAUSE 42 G	(G)in the description of "Articles of plastic of tariff heading 3923.30.00 and 3923.90.90", by deleting the word "imported"; • The Excise Act imposes excise duty on only imported articles of plastic under the tariff heading 3923.30.00 and 3923.90.90. Its introduction was geared towards protecting local industry.	We propose the removal of the amendment of Clause 42 G, that introduces excise tax on locally manufactured plastic	The Excise Act imposes excise duty on only imported articles of plastic under the tariff heading 3923.30.00 and 3923.90.90. Its introduction was geared towards protecting local industry. • By imposing excise duty on locally produced plastics will increase the cost of production and thus increase the costs of goods that require the use of plastic packaging. • The Finance Bill imposes taxes and levies on plastic packaging and this will result in multiple taxation on the same product, further increasing the costs to businesses and consumers.
23.	EXCISE ACT CLAUSE 4Q	Section 36 of the Excise Duty Act is amended in subsection (1A), by deleting the words "twenty-four hours" and substituting therefor the words "five working days"	Delete Section 36(1A) Section 36(1) already provides for payment of excise tax not later than the twentieth day of the succeeding month	• Managing cash flow and working capital has been adversely affected by this provision. • Manufacturers have on average 30 days payment terms with distributors which necessitates borrowing funds to pay taxes when the time of payment is short.

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
				• This has also increased the cost of compliance.
24.	EXCISE ACT 42(a)(i)(P)	Introduction of excise duty at 25% for vegetable oils of tariff codes 1511,1512,1515 and 1517.	Removal of Clause 42(a)(i)(P)	• Cooking oil is a basis need for most families. For health reasons, vegetable oils are recommended as they are low in cholesterol. Increasing the prices of vegetables oils will contribute to an increase in inflation making vegetable oils unaffordable to the common mwananchi. • Vegetable oils also form raw materials for daily soaps and detergents used by a majority of Kenyans.
25.	EXCISE ACT 42(b)(i)P	Increment of Excise Duty on telephone and internet data services from 15% to 20% in Part II of the First Schedule.	Deletion of the proposed amendment.	• The current 15% excise duty supports the growth of the digital economy by keeping communication and internet costs relatively affordable. • Raising the duty to 20% could discourage the use of online services and digital platforms, slowing down the growth of e-commerce, digital education, and remote work, which are crucial for economic development in the modern era.
26.	EXCISE ACT 42P	Increment of Excise Duty on Financial services and money transfer services from 15% to 20% in Part II of the First Schedule.	Deletion of the proposed amendment.	• The Finance Bill proposes to introduce VAT on Financial Services. A further increase in in excise will significantly increase the cost of financial services. • From a National Tax Policy, the focus of excise tax has been to deal with goods that have negative externalities.

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
				Imposing excise tax on financial services is already punitive on tax payers and a further increase will increase the cost of business and
	D. MISCELLANE-OUS FEES AND LEVIES ACT			
27.	**MISCELLANE-OUS FEES AND LEVIES ACT** **CLAUSE 45**	**Introduction of Eco-levy** **45.** The Miscellaneous Fees and Levies Act is amended by inserting the following new section immediately after section 7A— ***7B. (1) There shall be paid a levy to be*** ***known as the eco levy on the good*** ***specified in the Fourth Schedule manufactured in Kenya or imported into*** ***Kenya.***	Removal of the introduction of Eco-levy by deleting paragraph 7B of the Clause.	• The eco levy as currently proposed poses a significant threat to businesses in several sectors of the economy, firstly by imposing punitive levies on the goods, and secondly by lack of certainty in the form of a coherent framework for determining which goods are deemed to be significant contributors to environmental degradation, and how the rates for these are arrived at. • It is necessary to conduct comprehensive impact assessments to inform the design and implementation of taxes and levies aimed at addressing negative environmental impacts, • Section 2 of the Environmental Management and Co-ordination Act (EMCA) defines an environmental impact assessment as *a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment* The Statutory Instruments Act in Section 5 provides:

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
				(1) Before a regulation-making authority makes a statutory instrument, and in particular where the proposed statutory instrument is likely to- *a) have a direct, or a substantial indirect effect on business; or* *b) restrict competition;* Without an impact assessment done, there is lack of empirical evidence substantiating the claim that the specified products subject to the Eco Levy are significant contributors to environmental degradation or waste management challenges in Kenya
28.	VAT Section 17 (2) (B) Claim of input tax	…the registered supplier has not declared the sales invoice in a return, the deduction for input tax shall not be allowed until the first tax period in which the <u>person holds such documentation</u>	To delete the word has not declared and replaced with …has issued a Tax invoice	• Ensuring Taxpayers comply with TIMS/ETIMS invoicing
29.	TPA section 42A (4C) B Appointment of VAT withholding agent	Withholding Tax to be remitted within 5 days	Withholding Tax to be remitted before 20th of the following month	Efficiency and tax harmonization due to cash flow issues

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
30.	TPA Section 51(4A) Validity of Objection Decision	The word deemed can have many meanings. "Deemed" can be challenged because of the uncertainty it imports. The Objection shall be deemed disallowed. Deletion section 51(4A)	Shall stand disallowed to the extent of the information not provided within sixty days after the date on which the notice of objection was lodged. oppose suggested deletion of "the **Commissioner may make an objection decision within sixty days after the date on which the notice of objection was lodged**	a taxpayer can only appeal to the TAT based on an objection decision and failure to issue one would make the appeal to the TAT fatal
31.	51(11) Validity of Objection Decision The Commissioner shall make the objection decision within ninety days from the date of receipt	• 90 days' timeline will delay collection of revenue to the exchequer. • 90 days plus the new provision excluding weekends from counting applicable days, will push the actual waiting period to over 100 days.	Current wording of 60 days be retained since the Taxpayer has further avenues after the objection decision.	• Expedited dispute resolution is good for the country. • Extended period can be abused.

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
32.	Section 59A A penalty not exceeding two million shillings for every month or part thereof that the failure continues.	Tax penalties which are too steep as this one will scare away investors. • Will hurt the country and the economy	To delete the proposed new provision.	• The Commissioner has other penalty provisions in the law.
33.	Section 59 (5) Production of records	Failure to integrate to ETIMS – fine is 2 Million. The fine is too stringent	Minimal fine	• SMES may be forced to close businesses
34.	Section 42 (14)	No Agency notice to be issued on a Tax decision when one appeals	Retain current provision	For predictability
35.	section 42A (1) of the TPA withholding VAT agent	Deletion of the provision Provided that the withholding tax shall not apply to the taxable value of zero-rated supplies	Retain current provision	Businesses that are already dealing with zero-rated supplies and manufacturers who are already in perpetual refund position.
36.	TAT Section 32	Amend Section 32 of the Tax Appeals Tribunal Act by inserting the following, immediately after the words High Court	Amend Section 32 of the Tax Appeals Tribunal Act by inserting the following, immediately after the words High Court, “failure to which the decision of the Tribunal	To ensure that the provision is not misused and ensure adherence to Article 47 of the Constitution on fair administration of justice.

#	CLAUSE	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
			shall be final and binding on both parties"	
37.	VAT Section 17 (2) (B) Claim of input tax	…the registered supplier has not declared the sales invoice in a return, the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation	To delete the word has not declared and replaced with …has issued a Tax invoice	• Ensuring Taxpayers comply with TIMS/ETIMS invoicing
38.	TPA section 42A (4C) B Appointment of VAT withholding agent	Withholding Tax to be remitted within 5 days	Withholding Tax to be remitted before 20th of the following month	Efficiency and tax harmonization due to cash flow issues •

3.0 OTHER PROPOSALS FOR CONSIDERATION

	AREA	ISSUE OF CONCERN	RECOMMENDATION	JUSTIFICATION
1.	Withholding tax	The Finance Act 2023 amended the ITA to introduce a requirement that taxpayers remit withholding tax to the Commissioner within five working days where the tax has been deducted on qualifying payments. This scenario has created an onerous administrative burden to the taxpayers.	We propose harmonizing of the due date to 10th day of the following month. This can be done across all taxes to ease the administrative burden.	One of the canon's of taxation provide that taxes ought to be *easy and convenient for the taxpayer.* That means "every tax ought to be levied at the time, or in the manner in which it is most likely convenient for the contributor to pay it. Where timeline is not applicable/practicable, taxpayers are vulnerable to non-compliance, thus increasing time wasted in firefighting unreasonable targets. Where the proposal is adopted, it will:- 1. Reduce the cost of compliance. 2. Ensure that the taxpayers are not forced to rethink the payment cycle to suppliers which will in turn impact on the suppliers cashflow. Currently, taxpayers have been forced to review their payment cycles some of them opting to do one payment per month 3. The administrative burden may encourage non-compliance, since some companies make voluminous payments in a day which may require some reconciliations to ensure that the accurate tax is remitted.

<table>
<tr><th></th><th>AREA</th><th>ISSUE OF CONCERN</th><th>RECOMMENDATION</th><th>JUSTIFICATION</th></tr>
<tr><td>2.</td><td>Expansion of the PAYE bands</td><td>Currently, the income tax bands that apply to PAYE are as follows:
<table><tr><th>Monthly Bands of Taxable Income (KES)</th><th>Tax Rate</th></tr><tr><td>0 – 24,000</td><td>10%</td></tr><tr><td>On the next 8,333</td><td>25%</td></tr><tr><td>On the next 467,667</td><td>30%</td></tr><tr><td>On the next 300,000</td><td>32.5%</td></tr><tr><td>On amounts over 800,000</td><td>35%</td></tr></table>
As shown above, the current tax bands are very narrow with the PAYE rate of 30% applying to individuals earning over KES 32,333 per month. The progression is also very steep with individual earning above KES 500,000 per month paying tax at the rate of 32.5%. This may point to excessive taxation which, potentially, erodes the purchasing power and ability of individuals to save and invest to help spur growth.</td><td>We propose expansion of the PAYE bands. The National Treasury could carry out a study and do comparative analysis of the tax bands in the comparative jurisdictions to arrive at more expansive bands that will be optimal for both the government and salaried individuals.

We also recommend harmonization of the marginal tax rate to the corporate income tax rate to pre-empt tax planning and ensure equity.</td><td>Will make Kenya competitive;

Increased disposable income will translate into high consumption taxes and investments which will, certainly, spur economic growth</td></tr>
<tr><td>3.</td><td>Terminal dues</td><td>Terminal dues- paid to dependents of deceased employees</td><td>Reduce or waive tax on benefits paid to dependents of deceased employees.</td><td>Provide a stable source of income to those who lose their bread winner</td></tr>
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