

KNOW THE CHANGES

KENYA FINANCE ACT 2023

JUNE 2023





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PREAMBLE

PREAMBLE

The Finance Act 2023 (“the Act”) was assented by the President on the 26 June 2023.

The Act affects various tax and fiscal laws, including Income Tax, Value Added Tax, Excise Duty, and more.

This newsletter outlines upcoming changes taking effect on various dates, in line with the Public Finance Management Act and the start of the government's financial year for 2023-2024.

We set out below our analysis of the enacted changes to tax laws.

How we support

Tax Dispute Resolution & Management

Tax Planning & Transaction Structuring

Deals and Due Diligence

International Tax & Transfer Pricing

Compliance support & Health checks

Private Rulings & Proactive Solutions

Incentives, Affordable Housing, Housing,
Water, Donor Funded Projects, Energy

ECONOMIC OUTLOOK

ECONOMIC OUTLOOK – POLICY PRIORITY

Highlights

- The five priority sectors are Agricultural Transformation, Micro Small and Medium Enterprises (MSME) Economy, Housing & Settlement, Healthcare, Digital Superhighway and Creative Industry.
- The Government aims to implement interventions in infrastructure, manufacturing, blue economy, services economy, environment, education, women's agenda, youth development, social protection, sports, culture, and governance.
- With the help of the IMF, the Government aims to establish a new Resilience and Sustainability Facility arrangement that parallels the Extended Fund Facility (EFF)/ Extended Credit Facility (ECF) arrangements.
- Kenya will access Special Drawing Right (SDR) 306.7 million through the ECF/EFF in July 2023, increasing the total IMF financial support to SDR 1,509 million.
- Kenya will receive an additional SDR 407.1 million through the 20-month Resilience and Sustainability Facility (RSF) agreement, bringing the total IMF support to approximately US\$3.52 billion by April 2025.
- Kenya has implemented a new Government-to-Government (G2G) program for fuel essentials to ease the strain on local petroleum supply and currency due to the global US dollar shortage. The private sector can import petroleum through the Open Tender System (OTS).
- Each month, 740,000 metric tons of petroleum products are imported. 60% are used domestically, while 40% are used for regional transit. Procurement in US dollars can create foreign exchange challenges and unstable rates.
- The Government partnered with oil companies to stabilise the exchange rate, restructure fuel prices, and promote market growth. The agreements ensure extended credit periods, longer supply contracts, cost savings, and uninterrupted supply. This move aims to discourage speculation and stimulate the foreign exchange market.
- The Government is implementing programs to attract resources and manage climate risks with county governments and partners.

ECONOMIC OUTLOOK – POLICY PRIORITY

Highlights

- The e-Government Procurement system will launch by December 2023, streamlining public procurement and asset disposal processes for increased efficiency, transparency, and cost savings. It will also monitor all related activities.
- State corporations will downsize staff and enforce a 70:30 technical-to-support staff ratio. Hiring budgets will require approval and funding confirmation from multiple commissions.
- The Cabinet approved the Privatization Bill 2023 to simplify processes and restructure State Corporations. The goal is to decrease reliance on exchequer funding.
- There is a program to improve KPLC and Kenya Airways by reducing their loan balances, payables, and receivables. For KPLC, all transmission assets/lines will be transferred to KETRACO, settling the Rural Electrification Schemes operations and maintenance cost deficit, reducing system losses, and establishing fair representation for private shareholders.
- Treasury plans to implement Pending Bills Verification Committee to analyse and settle the bills, which now amount to over Kes.537.2 billion.
- In 2022, banks had a strong performance with a 12.3% deposit growth and a 22.0% pre tax profit increase. Non-performing loans decreased from 14.7% to 13.3%. Banks are consolidating and expanding regionally via acquisitions to enhance their resilience and capitalise on available opportunities. The sector is expected to remain stable and robust in 2023.
- The Central Bank of Kenya has regulated Digital Credit Providers (DCPs) to protect consumers. 32 DCPs have been licensed so far, with more awaiting approval. Collaboration with other regulators aims to ensure proper regulation and consumer safety.
- Central Bank of Kenya is launching "DhowCSD," an upgraded securities depository to boost financial markets. The system aims to enhance liquidity, efficiency, growth, and digital access while positioning Kenya as an economic hub. Investors will enjoy a seamless experience with scalable digital solutions.
- The bank is improving digital payments and reducing money laundering risks with mobile money interoperability, new payment provider licensing, and strengthened KYC/CDD processes. Payment laws are being reviewed, and oversight is enhanced for better AML/CFT /PF risk-based supervision.

ECONOMIC OUTLOOK - POLICY PRIORITY

Highlights

- Kenya Deposit Insurance Corporation may raise the coverage limit for MSMEs. They have an Alternative Dispute Resolution framework, and capital markets are developing.
- New regulations to be rolled out to help MSMEs access financing through the Nairobi Securities Exchange and allow start-ups to raise funds from local and global investors.
- LAPTRUST IMARA's Real Estate Investment Trusts are now listed on Nairobi Securities Exchange, allowing investors to invest in diversified assets that generate income.
- The National Treasury will use digital solutions to improve public service pensions. User friendly online platforms will allow pensioners to access statements, update information, and make inquiries. The goal is to make pension payments easier through the Public Service Superannuation Scheme.

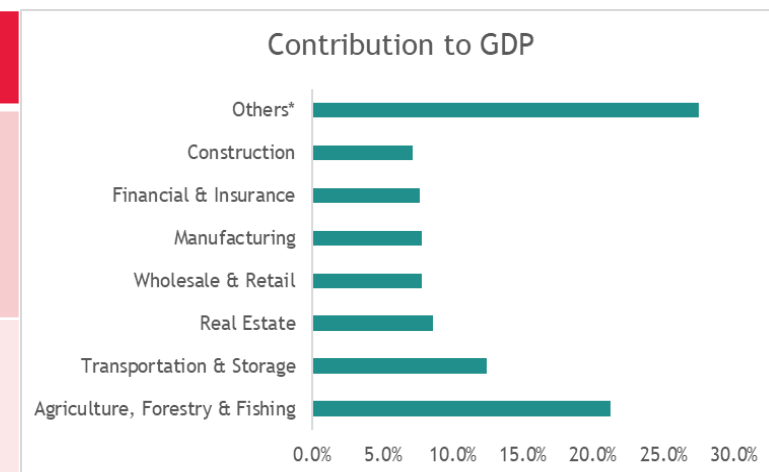
SECTORAL ANALYSIS

SECTORAL ANALYSIS

- The government's five priority sectors to be supported are Agricultural Transformation, MSME Economy, Housing and Settlement, Healthcare, Digital Superhighway and Creative Industry.
- Kenya has implemented a new Government-to-Government (G2G) program for fuel importation to ease the strain on local petroleum supply and currency due to the global US dollar shortage. The private sector can import petroleum through the Open Tender System (OTS).
- The Government is implementing programs to attract resources and manage climate risks with county governments and partners.
- The Cabinet approved the Privatization Bill 2023 to simplify processes and restructure State Corporations. The goal is to decrease reliance on exchequer funding.
- There is a program to improve KPLC and Kenya Airways by reducing KPLC's loan balances, payables, and receivables, transferring all transmission assets/lines to KETRACO, settling the RES operations and maintenance cost deficit, reducing system losses, and establishing fair representation for private shareholders.
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- The Central Bank of Kenya has regulated Digital Credit Providers to protect consumers. 32 DCPs have been licensed so far, with more awaiting approval. Collaboration with other regulators aims to ensure proper regulation and consumer safety.
- CBK is launching "DhowCSD," an upgraded securities depository to boost financial markets. The system aims to enhance liquidity, efficiency, growth, and digital access.
- The bank is improving digital payments and reducing money laundering risks with mobile money interoperability, new payment provider licensing, and strengthened KYC/CDD processes. Payment laws are being reviewed, and oversight is enhanced for better AML/CFT/PF risk-based supervision.
- KDIC to raise coverage limit for Micro, Small, and Medium Enterprises. They have an Alternative Dispute Resolution framework, and capital markets are developing.
- New regulations to be rolled out to help MSMEs access financing through the Nairobi Securities Exchange and allow start-ups to raise funds from local and global investors.
- LAPTRUST IMARA's Real Estate Investment Trusts are now listed on the NSE.

SECTORAL ANALYSIS

Sector	Comments
AGRICULTURE, FORESTRY & FISHING	<ul style="list-style-type: none"> • Sector contracted in 2022 further from 2021 due to drought conditions. • Low production of key food crops such as maize, potatoes and vegetables resulting to higher prices for these produce. • Varied performance for the production of cash crops and exports of horticulture. • Increase in fruit exports, however, a decline was experienced in exported vegetables and cut flowers. • Tea production also decreased over the year.
MANUFACTURING	<ul style="list-style-type: none"> • The sector will be heavily affected by the tax changes under the Finance Act • 2022 saw a year-on-year growth decrease to 2.7% from 7.3% in 2021, primarily due to low agricultural yield in the agro-processing sector. • Non-food manufacturing activities grew buoyed by the growth in the manufacture of motor vehicles, trailers and semi-trailers, basic and structural metal products.
CONSTRUCTION	<ul style="list-style-type: none"> • Expanded by 4.1%, albeit lower than the 6.7% experienced in 2021. • Growth was attributed to civil works such as the construction and maintenance of roads. • Cement consumption increased. • The decelerated growth in the sector resulted from a decline in imported construction materials.
INFORMATION AND COMMUNICATION	<ul style="list-style-type: none"> • 9.9% growth in 2022 versus a 6.1% growth in 2021. • Growth supported mainly by increase in mobile money transfer, growth in the bandwidth resulting from increasing demand for high-speed internet. • Increased ICT equipment exports and imports.
FINANCE AND INSURANCE	<ul style="list-style-type: none"> • Growth trajectory of the sector continued with an 12.8% growth in 2022 versus a 11.5% growth in 2021. • The financial sector grew by an additional 4.7% over the 2021 growth rate of 7.0% due to a broader money supply, domestic credit, credit to the national government and private credit. • Net premiums increased despite the insurance industry having a decelerated growth of 15.8% in 2022 versus a 26.9% growth in 2021.
TRANSPORTATION AND STORAGE	<ul style="list-style-type: none"> • A decelerated growth of 5.6% in 2022 versus 7.4% in 2021 despite the growth in freight via the SGR and passenger volumes on the SGR and air transport having increased. • The decelerated growth is attributable to decline in cargo throughput at the port of Mombasa.
ACCOMMODATION AND FOOD SERVICES	<ul style="list-style-type: none"> • The sector's growth slowed to 26.2% from last year's 52.6% post-pandemic recovery boost. More people are arriving at JKIA and MIA, leading to a 6% to 26% increase in bed occupancy rates in 2022. This is due to a 25.6% increase in conferences, with around 10,550 events.



Source: 2023 Economic Survey, Kenya Bureau of Statistics

Others* include but are not limited to:
 Mining & Quarrying
 Accommodation & Food
 Education
 Public administration & defence



INCOME TAX

INCOME TAX

Tax heads	Enacted changes	BDO insight
<p>WINNINGS FROM BETTING AND GAMING</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> ▪ Winnings: The payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act, excluding the amount staked or wagered. ▪ The 20% withholding tax will be on the net amount won. 	<ul style="list-style-type: none"> ▪ The Act has excluded the amount staked or wagered in determining winnings. ▪ This provides clarity and stability on what constitutes winnings.
<p>INTRODUCTION OF 5% DIGITAL CONTENT MONETIZATION</p> <p>Effective Date: 01 July 2023</p>	<p>Digital content monetization:</p> <ul style="list-style-type: none"> ▪ This is defined to mean offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel in any of the following forms: <ol style="list-style-type: none"> a. advertisement on websites, social media platforms or similar networks by partnering with brands, including endorsements from sellers of such brands; b. sponsorship, where a brand owner pays a content creator for content creation and promotion; c. affiliate marketing, where the content creator earns a commission whenever the audience of the content creator clicks on the product displayed; d. subscription services where the audience pays a periodic fee to access the content and support the content creator; e. merchandise sales where physical goods and services are sold featuring a logo, brand or catchphrase to the audience of the content creator, eBooks, courses, or software; f. membership programmes for exclusive content including early access; g. Licensing the content, including photographs, music or other businesses or individuals for use in the user’s projects; and h. crowdfunding for raising funds for specific goals for a content creator or another person; ▪ The tax is withheld and remitted by the platform owner or the person who facilitates the exchange or transfer of the digital asset. ▪ Non-resident persons who own platforms must register under the Simplified Tax Regime (“STR”). 	<ul style="list-style-type: none"> ▪ The introduction of digital content monetisation expands the tax base to include content creators and other affected persons in the marketing space. ▪ The rates applicable are 5% for local digital content creators and 20% for non-residents. ▪ The withholding tax and a return should be remitted within 5 days.

INCOME TAX

Tax heads	Enacted changes	BDO insight
<p>3% DIGITAL ASSET TAX (“DAT”)</p> <p>Effective Date: 01 July 2023</p>	<p>Digital Asset:-</p> <ul style="list-style-type: none"> ▪ This includes: - <ul style="list-style-type: none"> a) Anything of value that is not tangible, cryptocurrencies, token codes, or numbers held in digital form and generated through cryptographic means or otherwise, providing a digital representation of value exchanged with or without consideration that can be transferred, stored or exchanged electronically; and b) a non-fungible token or any other token of similar nature, by whatever name called. ▪ “Income derived from transfer or exchange of a digital asset” means the gross fair market value consideration received or receivable at the point of exchange or transfer. ▪ DAT is payable by a person deriving the income. The responsibility to deduct and remit the tax lies with the platform’s owner. ▪ A nonresident owner of such a platform is to register under the Simplified Tax Regime. ▪ The tax withheld is to be remitted within five working days. 	<ul style="list-style-type: none"> ▪ The introduction of digital content monetisation expands the scope of taxable digital services to increase tax revenues. ▪ The rates applicable are 5% for local digital content creators and 20% for non-residents. ▪ The withholding tax and a return should be remitted within 5 days. ▪ The affected persons may need to professionally review the impact and <i>structures</i> of their operations.
<p>REDEFINITION OF IMMOVABLE PROPERTY</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> ▪ The current definition of immovable property has been expanded to include “land, whether covered by water or not, any estate, rights, interest or easement in or over any land and things attached to the earth or permanently fastened to anything attached to the earth and includes a debt secured by mortgage or charge on immovable property; and a mining right, an interest in a petroleum agreement, mining information or petroleum information.” 	<ul style="list-style-type: none"> ▪ The expanded definition of immovable property increases the tax base about gains from the sale or transfer of such properties. ▪ More disposals will therefore attract more capital gains tax, amongst others.
<p>REDEFINITION OF A “RELATED PERSON”</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> ▪ A ‘Related Person’ is defined as “in the case of two persons where a person who participates directly or indirectly in the management, control or capital of the business of another person.” 	<ul style="list-style-type: none"> ▪ The expanded definition clarifies and simplifies the understanding of related persons to be consistent with international law. ▪ This affects transfer pricing and structuring.

INCOME TAX

Tax heads	Enacted changes	BDO insight
<p>FOREIGN EXCHANGE LOSS AND EBITDA</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> Foreign exchange losses shall be deferred (and not considered as a deduction) and claimed over a period of not more than five years from the date the loss was realised by a person whose gross interest paid or payable to a non resident person exceeds thirty per cent of the person's earnings before interest, taxes, depreciation, and amortisation in any year of income. The deductions may be spread to a five-year period where the EBITDA improves. 	<ul style="list-style-type: none"> This change requires a proper look into foreign exchange losses, especially at this time of the shilling depreciating against the USD and other hard currencies. Further lobbying will be needed to expand this to the same treatment as other expenses.
<p>GAINS AND PROFITS FROM EMPLOYMENT</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> Travel allowance paid to employees to perform official duties shall not be subject to PAYE to the limit prescribed by the Automobile Association of Kenya ("AA Rates"). Additional amounts shall be taxable. Club entrance and subscription fees will be taxed on the employee if the employer claims the deduction of such fees against their income. Wife's employment income will not be taxable in the hands of the husband. 	<ul style="list-style-type: none"> This standardizes mileage claim rates away from the varying mileage rates provided by different employers. The law currently taxes these expenses on the employer by adding back in the tax computation. Club entrance and subscription fees shall be deductible expense on the part of the employer. The Act brings to tax reimbursements without regard to those incurred for official purposes.
<p>EMPLOYEE SHARE OWNERSHIP PLANS</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> The market value of shares offered in an ESOP arrangement is changed to be the value when the option is exercised and not the time it is granted. The option for the Commissioner to set the value is removed. 	<ul style="list-style-type: none"> This will significantly increase the amounts subject to PAYE. A review of existing ESOP plans is therefore needed so that the tax impact is planned for.
<p>EMPLOYEE PAYMENT BY SHARES OF START-UPS</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> Emoluments to employees by way of shares of eligible start-ups shall be deferred for tax purposes up to the earlier of 30 days after:- (a) elapse of five years from the award of shares, (b) disposal of the shares by the employee or (c) cessation of employment with the employer. This doesn't apply to cash emoluments and The fair market value or the value determined by the Commissioner from the last audited financial statements shall be the basis of the taxable value. 	<ul style="list-style-type: none"> Employees of "eligible start-ups" may enjoy this deferral. These are companies that have (a) a turnover of not more than 100 million, (b) don't deal in management, professional or training services, (c)is not formed from spilling or structuring of an existing business, and (d) has not been in existence for more than 5 years.

INCOME TAX

Tax heads	Enacted changes	BDO insight
<p>TAXATION OF PERMANENT ESTABLISHMENTS</p> <p>PE EXPENSES</p> <p>Effective Date: 01 January 2024</p>	<ul style="list-style-type: none"> ▪ Corporation tax rate for permanent establishments (Pes) will be 30%. ▪ PEs will also deduct, for tax purposes, expenses incurred outside Kenya on executive and general administrative expenses. <ul style="list-style-type: none"> ▪ They will, however pay tax on “repatriated income”. Repatriated income shall be computed using the following formula: $R=A1 + (P - T) - A2$ Where: <ul style="list-style-type: none"> ▪ R is the repatriated profit; ▪ A1 is the net assets at the beginning of the year; ▪ P is the net profit for the year of income calculated in accordance with generally accepted accounting principles; ▪ T is the tax payable on the chargeable income; and ▪ A2 is the net assets at the end of the year. ▪ “Net assets” means the total book value of assets less total liabilities for the year of income and shall not include revaluation of assets. 	<ul style="list-style-type: none"> ▪ The clean-up brings the needed clarity in regard to taxation of permanent establishments.
<p>WITHHOLDING TAX CREDITS ON PAYMENTS TO NON - RESIDENTS</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> • Withholding tax assessed by KRA after an audit adjustment shall not be available as a deduction or credit. 	<ul style="list-style-type: none"> ▪ This means it is the responsibility of the taxpayer to compute and pay the correct amount of withholding tax. Adjustments arise mainly from transfer pricing audits which may reduce expenses that attract withholding tax.
<p>BENEFICIARY INCOME FROM TRUST</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> • Income paid to a beneficiary for education, medical treatment, housing and income which is collectively below Kes.10 million is no longer tax-exempt. 	<ul style="list-style-type: none"> ▪ Existing trust arrangements may need to review the location of their structures in Kenya against the potential impact of tax and stripping of family wealth.

INCOME TAX

Tax heads	Enacted changes	BDO insight
<p>TURNOVER AND PRESUMPTIVE TAX</p> <p>Effective Date: 01 January 2024</p>	<ul style="list-style-type: none"> The Act reduces the turnover tax threshold from Kes.1M to Kes.50M to between Kes.1M to Kes.25 million. Businesses whose turnover exceeds Kes.25 million will be taxed under the normal tax regime. 	<ul style="list-style-type: none"> More small businesses have been brought into the taxable category. The tax rate has been revised upward to 3%
<p>DIMINUTION IN VALUE OF UTENSILS</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> The deduction for the diminution of the value of utensils has been removed. 	<ul style="list-style-type: none"> This will affect the hospitality industry. Further lobbying is required in this respect.
<p>DEDUCTIBILITY OF EXPENSES</p> <p>Effective Date: 01 January 2024</p>	<ul style="list-style-type: none"> Effective 01 January 2024, any expenditure or loss where the invoices of the transactions are not generated via an electronic tax invoice management system shall not be allowed for deduction against revenue unless the transactions have been exempted from tax. Club fees, including entrance and subscription fees are deductible expenses in the determination of taxable income of a business. 	<ul style="list-style-type: none"> The Act seems to suggest that businesses should transact only with TIMS compliant persons, thus disenfranchising small businesses that are not required to register for VAT. This may conflict with the accrual concept in cases where invoices have not been received.
<p>INTEREST RESTRICTION UNDER EBITDA</p> <p>Effective Date: 01 January 2024</p>	<ul style="list-style-type: none"> Interest restrictions under EBITDA now apply only to borrowings from non-resident persons, whether related or not. It doesn't apply to the expenses relating to resident persons. Exemptions of companies engaged in manufacturing with a cumulative investment of KES 5 billion in the same year or five preceding years have been removed. The 30% of EBITDA restriction is lifted, and all interest may be carried forward for up to 3 subsequent years, provided the interest on loans from nonresident persons doesn't exceed 30% of EBITDA. This doesn't apply where the interest is exempted from tax 	<ul style="list-style-type: none"> Interest expense over 30% of EBITDA shall be an allowable deduction in the subsequent 3 years if the excess interest status reverses.

INCOME TAX

Tax heads	Enacted changes	BDO insight
<p>QUALIFYING INTELLECTUAL PROPERTY INCOME</p> <p>Effective Date: 01 January 2024</p>	<ul style="list-style-type: none"> Qualifying interest income that is subject to preferential tax rate shall be determined as follows: <div data-bbox="601 337 896 439" style="text-align: center; border: 1px solid black; padding: 5px; margin: 10px 0;"> $I = \left(\frac{Q}{T} \right) \times P$ </div> <p>Where:</p> <ul style="list-style-type: none"> I is income receiving tax benefits; Q is the research and development expenditures made by the taxpayer, excluding acquisition costs and related party outsourcing costs; T is the research and development expenditures made by the taxpayer, including acquisition costs and related party outsourcing costs; and P is intellectual property income, including royalties, capital gains and any other income from the sale of an intellectual property asset, including embedded intellectual property income calculated under transfer pricing principles; Provided the intellectual property losses shall only be deducted against intellectual property income. This is then used to determine where the arm's length standard. 	<ul style="list-style-type: none"> The Act has aligned Kenya's tax laws with OECD BEPS Action 5 on harmful tax practices. This will ensure a taxpayer only benefits from an IP if they incurred the qualifying R&D expenditures that gave rise to the IP income. The non-qualifying IP shall be subject to arm's length scrutiny.
<p>COUNTRY BY COUNTRY REPORTING</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> The Act has redefined the term ultimate parent entity as: <ul style="list-style-type: none"> an entity which is not controlled by another entity; and owns or controls, directly or indirectly, one or more constituent entities of a multinational enterprise group. Each ultimate parent entity that is resident in Kenya shall file a country-by-country report with the Commissioner if: <ol style="list-style-type: none"> the ultimate parent entity or a constituent entity is not obligated to file a country-by-country report in its jurisdiction of tax residence; the jurisdiction in which the ultimate parent entity is resident has a current international tax agreement to which Kenya is a party but does not have a competent authority agreement with Kenya at the time of filing the country-by-country report for the reporting financial year; or there has been a systemic failure of the jurisdiction of the ultimate parent entity's tax residence that the Commissioner notified the constituent entity resident in Kenya. 	<ul style="list-style-type: none"> Constituent Entities resident in Kenya shall now be held responsible for submitting the CBC report. The Act has provided clarity on the <ul style="list-style-type: none"> Year of income for which the KES 95 billion turnover threshold applies, The turnover to be considered, and Definition of the term ultimate parent entity.

INCOME TAX

Tax heads	Enacted changes	BDO insight
MEMBERS' CLUBS AND TRADE ASSOCIATIONS Effective Date: 01 July 2023	<ul style="list-style-type: none"> Gross revenue receipts from members' clubs or trade associations shall be deemed business income except Joining fees, welfare contributions and subscriptions. Trade associations are no longer required to notify the tax authorities to be deemed to carry out business charged to tax. 	<ul style="list-style-type: none"> The clarifies the understanding of the taxation of clubs as per Public Rulings issued by KRA previously. Definition of members is now not restricted to voting members.
TAXATION OF VACCINES COMPANIES Effective Date: 01 July 2023	<ul style="list-style-type: none"> Besides human vaccines, companies manufacturing other vaccines will also be eligible for a particular tax rate outlined in a Special Operating Framework approved by the Government. Without the SOF, they will be subject to corporation tax at a 10% rate. 	<ul style="list-style-type: none"> This move will encourage investments in vaccine manufacturing sector in Kenya.
POST RETIREMENT MEDICAL FUND RELIEF Effective Date: 01 January 2024	<ul style="list-style-type: none"> Contributions to a post-retirement medical fund will be eligible for a post-retirement medical. The relief reduces an individual's tax at a rate of 15% of the contributions subject to a maximum of Kes.60,000 per annum (Kes.5,000 per month). Investment income from a post-retirement medical fund, whether the fund is part of a retirement benefits scheme, will be exempt from tax. 	<ul style="list-style-type: none"> This scheme may add to the country's social safety nets to manage the accumulated expenses after retirement.
WHT on SALES & PROMOTIONS Effective Date: 01 July 2023	<ul style="list-style-type: none"> Sales promotion, marketing and advertising services will attract a withholding tax of 5%. 	<ul style="list-style-type: none"> This will broaden the scope of services subject to withholding tax.
INDIVIDUAL TAX RATES Effective Date: 01 July 2023	<ul style="list-style-type: none"> There will be no increase in taxes for individuals whose earnings are below Kes.500,000. A new tax band of 32.5% applies to those earning between Kes.500,000 to Kes.800,000 per month. 35% for that earning above Kes.800,000 	<ul style="list-style-type: none"> This will put pressure on high-earning individuals. Corporate, regional head offices may review the structures of their operations, especially considering the housing levy, NSSF and NHIF rate, which escalate the tax rate to 42%

INCOME TAX

Tax heads	Enacted changes	BDO insight
<p>RENTAL INCOME</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> ▪ KRA is empowered to appoint estate agents to deduct and remit rental income tax to the Commissioner, furnish a return of the rent received, and pay the tax within five days. 	<ul style="list-style-type: none"> ▪ This move may make landlords restructure their contracts to collect rent directly from the tenants. ▪ This proposal may increase rental income collections from large companies who rent premises in many parts of the country
<p>FIRST SCHEDULE-EXEMPT INCOMES</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> ▪ Income of an institution, body of persons or irrevocable trust of a public character established to relieve poverty, distress of the public or advancement of education or religion may apply to the Commissioner for tax exemption. ▪ New requirements for tax exemptions eligibility includes; <ul style="list-style-type: none"> ▪ An entity is operating transparently and accountable without restriction or discrimination. ▪ The entity to utilise its assets or incomes exclusively for the intended benefits without conferring a private benefit to an individual. <p>The act has introduced new exemptions: -</p> <ul style="list-style-type: none"> ▪ Royalties paid to a non-resident person by a company that manufactures human vaccines. ▪ Interest paid to a resident or non-resident person by a company that manufactures human vaccines. ▪ Investment income from a post-retirement medical fund and funds transfer from a post-retirement medical fund to a medical insurance cover provider. ▪ Non-Resident contractors, sub-contractors, consultants and employees engaged in grant-funded projects. ▪ Gains on the transfer of property within a special economic zone(SEZ) ▪ Royalties, interest, management fees, training, consultancy, agency or contractual payments paid by an SEZ or developer within 1st 10 years of establishment 	<ul style="list-style-type: none"> ▪ The criteria for assessing eligibility for exemption has become more stringent going by the recent suspension of exemptions, waivers and abandonments by the revenue authority. ▪ The tax exemptions for human vaccines enterprises are aimed at promoting local investments in vaccine manufacturing which non-resident manufacturers mainly undertake.
<p>SECOND SCHEDULE-INVESTMENT ALLOWANCE</p> <p>Effective Date: 01 January 2024</p>	<ul style="list-style-type: none"> ▪ The repealed Second Schedule to continue in operations for those who enjoyed the relief under it up to 31 December 2024 instead of 31 December 2023. ▪ Industrial Buildings and Docks to enjoy a capital deduction of 10% IBA per annum. 	<ul style="list-style-type: none"> ▪ A dock includes a terminal container berth, harbour, wharf, pier, jetty, storage yard, or other works in or at which vessels load or unload merchandise but does not include a dock or jetty used for recreation.

INCOME TAX

Tax heads	Enacted changes	BDO insight
<p>SECOND SCHEDULE- INVESTMENT ALLOWANCE</p> <p>Effective Date: 01 January 2024</p>	<ul style="list-style-type: none"> ▪ "Civil works" is now defined to include (i) roads and parking areas; (ii) railway lines and related structures; (iii) water, industrial effluent and sewerage works;(iv) earthworks for telecommunication and construction works undertaken in connection with installation and maintenance of telecommunication equipment and related structures". ▪ Refining of products is also now included in the definition of manufacture. ▪ "Industrial building" is used for transport, bridge, tunnel, inland navigation, water and electricity or hydraulic power undertaking". ▪ "Machinery used in agriculture" is now defined to mean " machinery used directly in agricultural activities including tilling, planting, irrigation, weeding and harvesting". ▪ "Telecommunications equipment" includes civil works deemed as part of the telecommunication equipment or civil works that contribute to the use of the telecommunication equipment. 	<ul style="list-style-type: none"> ▪ These bring clarity to the application of capital allowance.
<p>MOTOR VEHICLE ASSEMBLERS</p> <p>ADVANCE TAX</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> ▪ For local assembly of motor vehicles, the extension of the 15% corporation tax rate is given for a further 5 years. It depends on achieving a local content of 50% of the ex-factory value of the motor vehicle, effective 01 July 2023. ▪ Advance tax on commercial vehicles, including pick-ups and trucks, has been set at Kes.2,500 per tonne of load capacity or Kes.5000 per year, whichever is higher. It was previously Kes.1,500 per tonne of load capacity per year of a maximum of Kes.2,500. The tax excludes tractors and trailers used for agricultural purposes. ▪ Advance tax on saloon cars, station wagons, minibuses and coaches has been set at Kes.100 per passenger per month or Kes.5,000 per year, whichever is higher. It was previously Kes.60 per passenger capacity per year per month of Kes.2,400 per year, whichever is higher. 	<ul style="list-style-type: none"> ▪ The changes will support the growth of the local automotive assembly
<p>RESIDENTIAL RENTAL INCOME TAX</p> <p>Effective Date: 01 January 2024</p>	<ul style="list-style-type: none"> ▪ The tax rate for residential rental income shall be 7.5% of the gross rental receipts. This is reduced from 10%. 	

INCOME TAX

Tax heads	Enacted changes	BDO insight
<p>TAXATION OF CAPITAL GAINS</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> ▪ Gains derived from the alienation of shares or comparable interests, including interests in a partnership or trust, if, at any time during the three hundred and sixty-five days preceding the separation, the shares or comparable interests derived more than 20% of their value directly or indirectly from immovable property situated in Kenya will be deemed taxable in Kenya. ▪ The person alienating the share shall notify the commissioner in writing where there is a change of at least 20% in the underlying ownership of the property. ▪ Where property is transferred in a transaction that is not subject to capital gains tax, and the property is subsequently transferred in a taxable transaction within a period of fewer than five years, then the adjusted cost in the subsequent transfer shall be based on the original adjusted price as determined in the first transfer. ▪ The due date for tax payable in respect of property transferred under this Part shall be the earlier of: <ul style="list-style-type: none"> ▪ Receipt of the total purchase price by the vendor; or ▪ Registration of the transfer. ▪ Internal restructuring shall be exempt from the capital gains tax, which does not involve a transfer of property to a third party within a group that has existed for at least twenty-four months. 	<ul style="list-style-type: none"> ▪ These provisions may affect corporate transactions. ▪ Additional tax and legal review need to be conducted on corporate structure.
<p>TAXATION OF OIL AND GAS AND MINING</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> ▪ A change of 20% or more in the underlying ownership of a licensee or contractor will be notified to the Commissioner. This is up from 10%. 	<ul style="list-style-type: none"> ▪ This allows for greater room for transactions in the extractive sectors.

VALUE ADDED TAX

VALUE ADDED TAX

Tax heads	Enacted changes	BDO insight
<p>Fuel</p> <p>Place of supply of services in Kenya</p> <p>Time of Supply of a national carrier</p> <p>Qualification for deduction of input tax by a registered person</p> <p>Introduction of VAT on insurance compensation</p> <p>VAT Registration for persons supplying digital services</p> <p>Location for maintaining written records</p> <p>Effective Date: 01 July 2023</p>	<ul style="list-style-type: none"> ▪ VAT on fuel and other petroleum products has been revised to 16%. ▪ A supply by a non-resident is deemed to be a supply made in Kenya, whether made to registered or unregistered persons. ▪ Time of supply of a national carrier shall be the date on which goods are delivered or services performed. ▪ A person will only be allowed to claim input tax if the person holds a valid tax invoice and the supplier has declared the sale in return. ▪ Where owners of taxable supplies and input VAT has been deducted are compensated for the loss of the taxable supply, the compensation shall be charged VAT. ▪ Suppliers of digital services tax shall be required to register for VAT whether they meet the registration threshold of Kes. 5 Million or not. ▪ The Act has deleted the requirement to maintain written records in Kenya. 	<ul style="list-style-type: none"> ▪ This causes a fuel prices crisis increasing operational costs across all the sectors of the economy. ▪ This provides clarity on the application of VAT on imported services. Previously, the law only required unregistered persons to account for VAT on imported services ▪ This Act has disallowed the claim of input VAT on non-TIMS compliant invoices while ensuring that the seller must have declared the sale. ▪ Receipt of money for compensation for losses will be treated as a taxable supply only when the input VAT was claimed. ▪ This provides clarity on registration requirements for non-resident suppliers of digital services. Previously, the law was silent. ▪ The Act allows the taxpayer to keep records in any location provided they can avail them upon request by the tax authority.

VALUE ADDED TAX

Tax heads	Enacted changes	BDO insight
VAT refund on bad debts Effective Date: 01 July 2023	<ul style="list-style-type: none">▪ The allows application for VAT refunds provided;<ul style="list-style-type: none">• No application is within 10 years from the time of supply• The application complies with section 47(5) of Tax Procedures Act.• The amount may be used to offset future VAT liabilities• If the refund is recovered, the taxpayer shall refund the commissioner within 60 days. Other interest of 2% shall apply on the amount refunded.	This is a positive move as it allows taxpayers to recover taxes paid on supplies made to persons under statutory management and bad debts.

VALUE ADDED TAX ACT

RECLASSIFICATION OF VAT TREATMENT	Previous	Current
Liquefied petroleum gas	8%	0%
Transfer of business as a going concern	16%	Exempt
Inputs or raw materials locally purchased or imported by manufacturers of fertilisers as approved by the Cabinet Secretary	0%	Exempt
Exportation of taxable services	16%	0%
Transportation of sugarcane from farms to milling factories	0%	Exempt
Fertilizers of Chapter 31	0%	Exempt
Agricultural pest control products.	0%	Exempt
All inputs and raw materials, whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary responsible for matters relating to agriculture	0%	Exempt
Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health	0%	Exempt
0402.29.10 - Milk, specifically prepared for infants	Exempt	16%
3002.19.00 - Other- Antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes.	Exempt	16%
Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks. (proposed deletion of paragraph 62 First Schedule)	Exempt	16%
3003.90.90 - Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measurable doses or in forms or packings for retail sale.	Exempt	16%
3005.90.10 - White absorbent cotton wadding, impregnated or coated with pharmaceutical substances, or put up in forms of packings for retail sale for medical, surgical, dental or veterinary purposes.	Exempt	16%

VALUE ADDED TAX ACT

RECLASSIFICATION OF VAT TREATMENT	Previous	Current
Inbound International sea freight offered by registered person	N/A	0%
The supply of locally assembled and a manufactured mobile phones	N/A	0%
All tea and coffee locally purchased for the purpose of value addition before exportation subject to approval by the commissioner -General	N/A	0%
Supply of motorcycles of tariff heading 8711.60.00	N/A	0%
Supply of electric bicycles	N/A	0%
Supply of solar and lithium-ion batteries	N/A	0%
Supply of electric buses of tariff heading 87.02	N/A	0%
Inputs or raw materials locally purchased or imported for manufacture of animal feeds	N/A	0%
Bioethanol vapour (BEV) stoves classified under HS Code 7321.12.00 (coking appliances and plate for liquid fuel)	N/A	0%
3004.90.90 - Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.	Exempt	16%
3003.90.00- Infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale and other medicaments consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale	Taxable	Exempt
3003.90.00- Others	Exempt	16%
Other medicaments containing alkaloids or derivatives thereof , put up in measured doses or in forms packagings for retail sale		Exempt
Other medicaments containing hormones or other products of heading no.29.37 not put up in measured doses or in forms or packaging for retail sale	N/A	Exempt
3005.90.11, 3005.90.12, 3005. 90.19- White absorbent cotton wadding, impregnated or coated with pharmaceutical substances, or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes	Taxable	Exempt
3003.90.10- Infusion solutions for ingestion other than by mouth put up in measurable doses or in forms or packings for retail sale	Exempt	16%



EXCISE DUTY ACT

EXCISE DUTY ACT

Tax heads	Enacted changes	BDO insight
APPEAL RESOLUTION ON SUSPENSION OF LICENCE	<ul style="list-style-type: none"> If a licensed person appeals the suspension of their excise license, the Commissioner must respond within 14 days. The Commissioner will provide written instructions on steps to take before a specified date, which must be at least 14 days away, to address the issues that led to the suspension. The suspension will be lifted if the necessary action is taken within the given time frame. 	<ul style="list-style-type: none"> This streamlines the appeal process for suspending an excise license, provide clear instructions to the licensee, and set specific timelines for compliance. It encourages timely resolution, transparency, and accountability in addressing the issues that led to the license suspension.
OFFENSES RELATING TO EXCISE STAMPS AND MARKINGS	<ul style="list-style-type: none"> It is considered an offence for an individual to engage in several actions, including defacing or printing over an excise stamp on excisable goods or packages, possessing excisable goods without the necessary excise stamps or exemptions, acquiring excise stamps without authorisation, creating counterfeit excise stamps without the Commissioner's approval, possessing unauthorised excise stamps, distributing, selling, or trading excisable goods without properly affixed excise stamps, or possessing, conveying, distributing, selling, or trading in excisable goods with counterfeit excise stamps. If convicted of an offence under this subsection, an individual may face a fine of up to five million shillings, imprisonment for a maximum of three years, or both. 	<ul style="list-style-type: none"> This move deters fraud, protects government revenue, ensures consumer safety, and promotes compliance with excise stamp regulations. It establishes penalties for offences related to excise stamps and provides a legal framework for enforcement and prosecution to address violations.
PAYMENT OF EXCISE DUTY ON ALCOHOLIC BEVERAGES	<ul style="list-style-type: none"> Licensed manufacturers of alcoholic beverages are required to pay excise duty to the Commissioner within 24 hours of removing the goods from the stockroom. 	<ul style="list-style-type: none"> It is important for businesses to assess the financial, operational, and compliance implications of the change in law and make necessary adjustments to ensure compliance while maintaining their competitiveness and financial stability.

EXCISE DUTY ACT

Tax heads	Enacted changes	BDO insight
PAYMENT OF EXCISE DUTY ON BETTING AND GAMING	<ul style="list-style-type: none">▪ Section 36 of EDA requires bookmakers to remit Excise Duty on betting and gaming within 24 hours from the closure of the day's transactions.▪ Taxpayers must pay duty to the Commissioner via a designated platform by midnight of the same day. The Commissioner may require certain sectors to remit Excise Duty within 24 hours of transactions closing, per Gazette notice.	<ul style="list-style-type: none">▪ This change will have cashflow and administrative hurdles for businesses. This has to be carefully evaluated and adjusted for.

BDO IN EAST AFRICA

Kenya

Tanzania

Uganda

Ethiopia

Rwanda

DRC

EXCISE DUTY ACT

RECLASSIFICATION OF EXCISE DUTY TREATMENT	Previous	Current
Imported Glass bottles (Excluding imported glass bottles for packaging of pharmaceutical products)	25%	35%
Imported Alkyd	10%	20%
Unsaturated polyester	10%	20%
Imported Emulsion VAM	10%	20%
Imported Emulsion-Styrene Acrylic	10%	20%
Imported Homopolymers	10%	20%
Imported Emulsion B.A.M	10%	20%
Imported Fish	N/A	10%
Powdered Juice	N/A	Kes.25 per Kg
Imported Sugar excluding imported sugar purchased from a registered pharmaceutical manufacturer	N/A	Kes.5 per Kg
Imported Cement	N/A	10% of Value or Kes.1.50 per kg whichever is higher
Imported Furniture of tariff heading 9403 excluding furniture originating from East African Community Partner States that meet the East African Community Rules of Origin.	N/A	30%
Imported chocolate (all, not just white which was taxed) and other food preparations containing cocoa of tarrif nos. 1806.31.00, 1806.32.00 and 1806.90.00.	0%	Kes.242.29 per kg
Imported white chocolate of heading 1704	0%	Kes.242.29 per kg
Imported paints, Varnishes and lacquers of heading 3208, 3209, and 3210.	N/A	15%
Disassembled or unassembled kits for local assembly or manufacture of mobile phones	10%	Exempt
Locally assembled motorcycles	Kes.10,000 per unit	None



EXCISE DUTY

RECLASSIFICATION OF EXCISE DUTY TREATMENT	Previous	Current
Imported non-virgin test liner of heading 4805.24.00	N/A	25%
Imported non-virgin fluting medium of heading 4805.19.00	N/A	25%
Imported Cartons, boxes, and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper boards, and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10, and 4819.20.90.	N/A	25%
Imported Plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90 and 3921.19.90.	N/A	25%
Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00 and 4821.90.00	N/A	25%
Excise duty on telephone and internet data services	20%	15%
Excise duty on money transfer services by banks, money transfer agencies and other financial service providers or payments service providers licensed under the National Payment System Act, 2011.	12%	15%
Excise Duty on betting amount wagered o Staked.	7.5%	12.5%
Excise duty on gaming amount wagered or Staked.	7.5%	12.5%
Excise duty on the Prize Competition amount paid or charged to participate in the Competition.	7.5%	12.5%
Excise duty on lottery (excluding charitable lotteries) e amount paid or charged to buy the lottery ticket.	7.5%	12.5%
Excise duty on fees charged on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, lotteries and price competitions.	N/A	15%

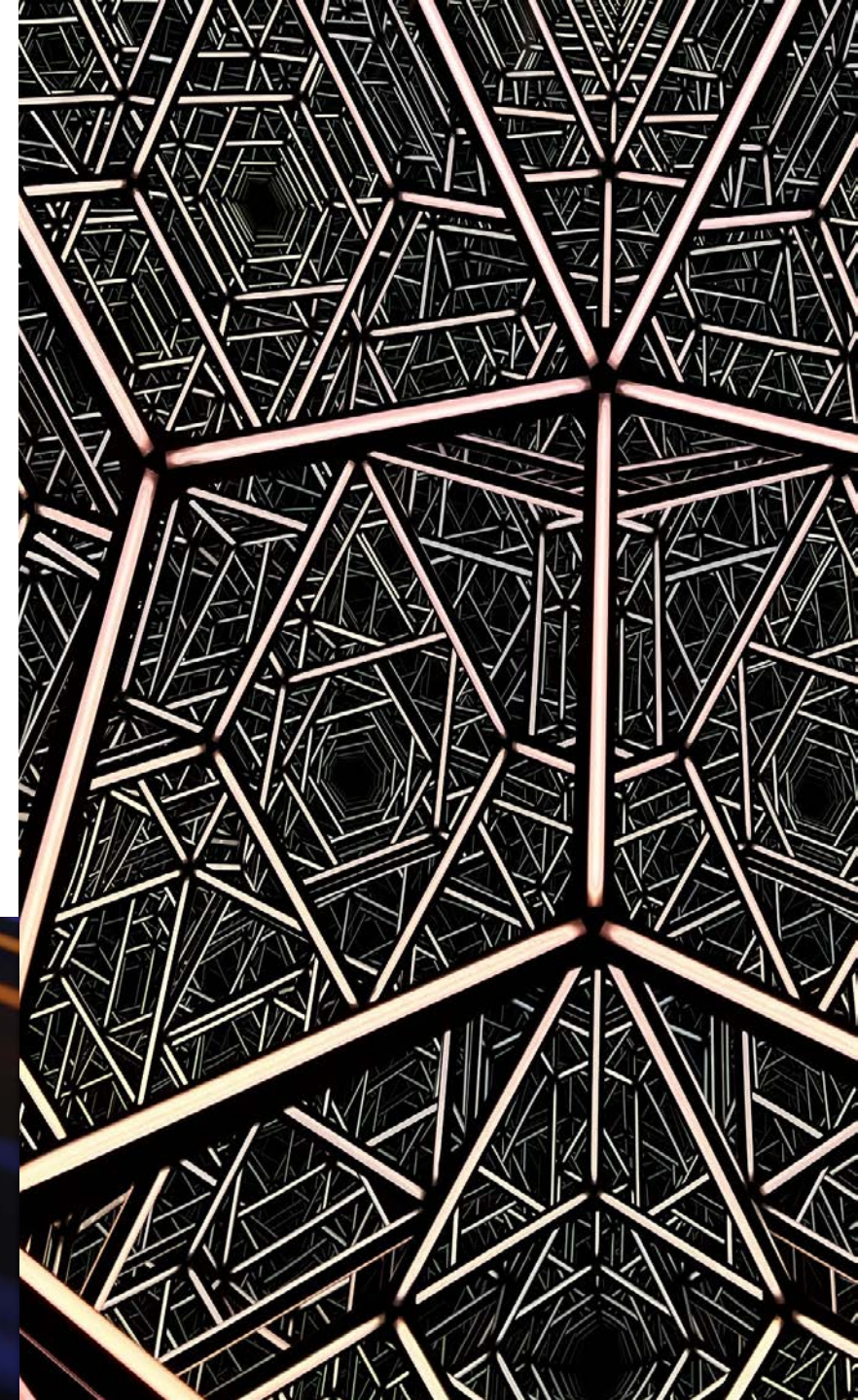
TAX APPEAL TRIBUNAL

TAX APPEAL TRIBUNAL

Definition of appeal decision

The appealable decision has a meaning as defined in the Tax procedures Act.

The Act requires the Appeal to be an appealable decision and the party should provide other documents that may be necessary to enable the Tribunal to make a decision on the appeal.



TAX PROCEDURES ACT

TAX PROCEDURES ACT

New provisions

A refund decision will not form part of a tax decision subject to appeal.

Late payment interest to fall under the meaning of a tax decision.

According to Section 6A (3), any multilateral agreement or treaty entered into by or on behalf of the Government of Kenya regarding mutual administrative assistance in tax collection will be enforced according to the terms of the agreement or treaty. This provision has been added to the section.

As per the newly introduced Section 23 (3A), a trustee residing in Kenya and managing a registered trust within or outside the country must maintain and provide the Commissioner with necessary records related to tax laws, regardless of whether the generated income is taxable in Kenya or not. This amendment applies to subsection 3.

Section 23A allows the Commissioner to create an electronic system for issuing tax invoices and keeping stock records. Businesses must use this system to issue tax invoices and keep records. Resident and non-resident entities must use the system to determine their tax liability. The system excludes certain payments. The Commissioner can exempt individuals by issuing a notice in the gazette. This section was added to address the electronic tax invoice system and record keeping.

Section 32A allows the commissioner to recover a tax claim under an international agreement. The request must be uncontested and enforceable. It applies only if the claim can no longer be contested and the person is not a resident of the requesting state. The commissioner can issue a notice to the liable person to admit liability within a specified time.

Provisions for abandonment of tax by the Commissioner due to difficulty and inability to collect the tax are repealed

Section 37E of the Act, relating to the amnesty on foreign sourced incomes, states that if all principal tax is paid before December 31, 2022, no penalties or interest will be charged. If not, the person can apply for an amnesty or propose a payment plan. The amnesty is granted only once, and all outstanding taxes must be paid by June 30, 2024. Any unpaid taxes will incur interest and penalties. The commissioner will not remit any penalties imposed under section 85. The goal is to prevent the commissioner from recovering fines.

Taxpayers can use overpaid taxes to pay off debts and future liabilities. If they apply under (1)(a), the overpaid tax will be used for this purpose. If they apply under (1)(b), they will be refunded within six months. If not refunded, overpaid tax will be applied towards any outstanding debts or liabilities.

An application can be submitted to the Commissioner for a reduction in penalties or interest, with reasons for the request. The Commissioner may grant full or partial reduction for hardship, equity, or if tax recovery is impossible. Section 85 (anti-avoidance) penalties are not eligible. If over Kes1.5 million, Cabinet Secretary approval is needed. Quarterly reports and public records of remissions are required. Auditor-General gives reports every three months.

MISCELLANEOUS FEES AND LEVIES ACT

MISCELLANEOUS FEES AND LEVIES ACT

Tax heads	Enacted changes	BDO insight
<p>Reduction of Import Declaration Fee</p> <p>Effective Date: 01 July 2023</p>	<p>The IDF fees reduced from 3.5% to 2.5% of the customs value</p>	<ul style="list-style-type: none"> Reduction of IDF will result in a reduction of importation cost for goods especially for manufacturers whose input costs will be reduced by a 1% margin.
<p>Reduction of Import Declaration Fee for manufacturers etc</p> <p>Effective Date: 01 July 2023</p>	<p>The Act abolished the IDF preferential rate of 1.5% applicable on:</p> <ul style="list-style-type: none"> Manufacturers that import raw materials and intermediate products. Inputs for construction of houses under the Affordable Housing Scheme. Goods imported under the East Africa Community Duty Remission Scheme. Remission Scheme 	<ul style="list-style-type: none"> Despite the abolishment of the IDF preferential rate of 1.5%, the affected persons or imports will only realize an increase of 1% of the customs value as the Act also reduced the standard IDF rate from 3.5% to 2.5%. The proposed amendment will align the MFLA to allow for non-discriminatory application of RDL at the rate 1.5% for persons or imports not specifically exempted under Part B of the Second Schedule to the MFLA.
<p>The Finance Act 2023, has brought about notable change by revoking the Commissioner's Authority to adjust the rate of export levy on an annual basis, considering inflation.</p>	<p>With the Commissioner's authority revoked, the rate of export levy will remain fixed without the consideration of annual adjustments based on prevailing inflation rates. This means that the export levy rate will no longer reflect changes in the purchasing power of money due to inflation.</p>	<ul style="list-style-type: none"> The change in the Commissioner's authority could be driven by a desire to provide stability and predictability in applying export levies. Maintaining a fixed rate, irrespective of inflationary pressures, may offer a more consistent framework for exporters to plan their operations and budgeting. Inflation can erode the value of money, and without corresponding adjustments, the export levy may become less effective in generating revenue and achieving its intended objectives. The absence of inflation-adjusted export levy rates may have implications for the competitiveness of exports. If the export levy does not reflect changes in inflation, it could increase the cost burden on exporters and potentially impact their ability to compete effectively in international markets.

MISCELLANEOUS FEES AND LEVIES ACT

Tax heads	Enacted changes	BDO insight
<p>Introduction of Export and Investment Promotion Levy that will be subjected on imports of specified items as provided for under the MFLA.</p> <p>The export and investment promotion levy will be paid to a fund under the Public Finance Management Act which will be utilized to boost manufacturing, increase exports, create jobs, save on foreign exchange, and promote investments.</p> <p>Goods subject to the export and investment promotion levy but originating from Other East African Community Partner States will not be subjected to the levy.</p>	<p>The Finance Act has introduced a new levy known as Export and Investment Promotion Levy on specific imported items.</p> <p>The Export and Investment Promotion Levy will be utilized specifically for promoting investments among other initiatives.</p>	<ul style="list-style-type: none"> ▪ This levy will have adverse impact on local manufacturing sector
<p>Reduction of Railway Development Levy (“RDL”) from 2.5% to 1.5% of the customs value.</p>	<p>The Act has implemented a reduction of RDL fees from 2.5% to 1.5% of the customs value which will reduce the costs associated with importation.</p>	<ul style="list-style-type: none"> ▪ Reduction of RDL will result in a reduction of importation cost for goods especially for manufacturers whose input costs will be reduced by a 1% margin.
<p>Abolishment of the RDL preferential rate of 1.5% applicable on:</p> <ul style="list-style-type: none"> • Raw materials and intermediate products imported by manufacturers. • Inputs for construction of houses under an affordable housing scheme. 	<p>The abolishment of RDL preferential rate of 1.5% will be inconsequential to the Manufacturers that import raw materials and intermediate products and cost of inputs for construction of houses under the Affordable Housing Scheme as the Act has reduced the applicable RDL rate to 1.5% of the customs value.</p>	<ul style="list-style-type: none"> ▪ The amendments will align the MFLA to allow for non-discriminatory application of RDL at the rate 1.5% for persons or imports not specifically exempted under Part B of the Second Schedule to the MFLA

MISCELLANEOUS FEES AND LEVIES ACT

Tax heads	Enacted changes	BDO insight
<p>The Finance Act has introduced an Export and Investment promotion levy through the introduction of a Third Schedule on the following products:</p> <ul style="list-style-type: none"> • Cement clinkers of Tariff No. 2523.10.00 at customs value of 17.5% • Semi-finished products of iron or non-alloy steel containing, by weight, <0.25% of carbon; of rectangular (including square) cross-section, the width measuring less than twice the thickness of Tariff No. 7207.11.00 at customs value of 17.5% • Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter of cross-section measuring less than 8 mm of Tariff No. 7213.91.10 at customs value of 17.5% • Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14mm in diameter; other of Tariff No. 7213.91.90 at customs value of 17.5% • Uncoated kraft paper and paperboard, in rolls or sheets; Kraft liner; Unbleached of Tariff No. 4804.11.00 at customs value of 10% • Sack kraft paper; Unbleached of Tariff No. 4804.21.00 at customs value of 10% • Other kraft paper and paperboard weighing 150 g/m² or less: Unbleached of Tariff No. 4804.31.00 at customs value of 10% • Sacks and bags, having a base of a width of 40 cm or more of Tariff No. 4819.30.00 at customs value of 10% • Other sacks and bags, including cones of Tariff No. 4819.40.00 at a customs value of 10% <p>Effective Date: 01 September 2023</p>	<p>The Act has introduced specific items listed under the Third Schedule to the MFLA to be subjected to the Export and Investment Promotion Levy.</p>	<ul style="list-style-type: none"> ▪ The proposal will automatically increase the cost of importation of the listed items subject to the levy by an additional 10% of the customs value.

MISCELLANEOUS FEES AND LEVIES ACT

Import Declaration Levy

ITEM	CURRENT RATE	NEW RATE
Gifts for diplomatic and consular missions and to the United Nations Missions	Exempt	1.5% of the customs value
Goods for official use by institutions or organizations exempted under the Privileges and Immunities Act (other than diplomatic and consular missions, the United Nations and its agencies which previously exempt)	3.5% of the customs value	Exempt
Aircraft of unladen weight not exceeding 2,000kg and helicopters of heading 8802.11.00 and 8802.12.00	3.5% of the customs value	Exempt
Spacecraft and parts thereof of Chapter 88	3.5% of the customs value	Exempt
Aircraft parts thereof of Chapter 88	3.5% of the customs value	Exempt
Material supplies of equipment, machinery and motor vehicles for the official use by the Kenya Defense Forces and National Police Service	3.5% of the customs value	Exempt
Goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya	3.5% of the customs value	Exempt
Liquified petroleum gas	3.5% of the customs value	Exempt

MISCELLANEOUS FEES AND LEVIES ACT

Railway Development Levy

ITEM	CURRENT RATE	NEW RATE
Material supplies of equipment, machinery and motor vehicles for the official use by the Kenya Defense Forces and National Police Service	2.5% of the customs value	Exempt
Goods imported for official use by international and regional organizations that have bilateral or multilateral agreements with Kenya	2.5% of the customs value	Exempt
Liquified petroleum gas	2.5% of the customs value	Exempt
Aircraft, spacecraft, and parts thereof	2.5% of the customs value	Exempt

MISCELLANEOUS FEES AND LEVIES ACT

Export Levy

ITEM		CURRENT RATE	NEW RATE
TARIFF NO.	DESCRIPTION		
4101.20.00	Whole unsplit hides and skins, of a weight per skin not exceeding 8 kg when simply dried, 10 kg. when dry salted, or 16 kg. when fresh, wet salted or otherwise preserved.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4102.21.00	Raw skins of sheep or lambs (pickled, but not tanned, parchment-dressed or further prepared), without wool on whether or not split, other than those excluded by Note 1(c) to Chapter 41.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4103.20.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or (c) to this Chapter, of reptiles.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4103.30.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), but not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter, of swine.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4103.90.00	Other raw hides and skins other than of reptiles, swine, goats or kids.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4104.19.00	Other tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared, in the wet state (including wet - blue).	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4101.40.00	Hides and skins of equine animals.	80% or USD 0.52 per kg.	Not Applicable
4101.50.00	Whole hides and skins, of weight exceeding 16 kg.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher

MISCELLANEOUS FEES AND LEVIES ACT

Export Levy

ITEM		CURRENT RATE	NEW RATE
TARIFF NO.	DESCRIPTION		
4101.90.00	Other, including butts, bends and bellies.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4102.10.00	Raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1(c) to Chapter 41.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4301.10.00	Raw furskins of mink, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4301.80.00	Other raw furskins, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4301.90.00	Heads, tail, paws, and other pieces or cuttings, suitable for furriers' use.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4302.11.00	Whole skins, with or without head, tail or paws, not assembled, of mink.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4302.19.00	Other whole skins, with or without head, tail or paws, not assembled.	80% or USD 0.52 per kg.	50% or USD 0.32 per kg whichever is higher
4302.20.00	Heads, tails, paws and other pieces or cuttings, not assembled.	80% or USD 0.52 per kg	50% or USD 0.32 per kg whichever is higher
1703	Molasses resulting from the extraction or refining of sugar	N/A	20% of customs value

OTHER ACTS

OTHER ACTS

Tax heads	Enacted changes	BDO insight
<p>EMPLOYMENT ACT</p> <p>Effective Date: 01 July 2023</p>	<p><u>Introduction of the National Housing Development Fund (NHDF) statutory contribution</u></p> <p>The Act introduces the NHDF contribution payable to the NHDF on or before the 9th day of the succeeding month in which the deduction was made. The NHDF contribution is a statutory deduction on an employee's employment income at the rate of 1.5% of the employee's basic salary with the employer matching the same. The employer will be responsible for the deduction and remittance of the NHDF statutory deduction.</p>	<ul style="list-style-type: none"> The amendments will result in reduced net pay for the employee and increased employment costs to the employer, notwithstanding the Affordable Housing Relief provided for under the ITA at the rate of 15% of the employee's contribution to a limit of Kes.108,000 per annum.
<p>UNCLAIMED FINANCIAL ASSETS ACT</p> <p>Effective Date: 01 July 2023</p>	<p><u>Allowance for a claimant to assign right to claim</u></p> <p>The Act amended the Unclaimed Financials Assets Act to allow for a claimant to assign their rights to claims to other suitable persons.</p>	<ul style="list-style-type: none"> The amendment allows designated representatives of claimants to receive assets or amounts upon a successful claim of the unclaimed financial asset from the Unclaimed Financial Assets Authority.
<p>BETTING, GAMING AND LOTTERIES ACT</p> <p>Effective Date: 01 July 2023</p>	<p>Betting, lotteries, gaming and prize competition tax to be collected by the Kenya Revenue Authority in accordance with the TPA</p> <p>The Act has further empowered the Commissioner to collect the Betting Tax, Lottery Tax, Gaming Tax and Prize Competition Tax pursuant to the processes and procedures set out in the TPA.</p>	<ul style="list-style-type: none"> The anchoring in law for the Commissioner to collect taxes charged under the BLGA pursuant to the TPA will assist in enforcement of compliance.
<p>KENYA REVENUE ACT</p> <p>Effective Date: 01 July 2023</p>	<p><u>KESRA's expanded reach to be anchored in law</u></p> <p>The Act further amend the KRA Act to clearly state and reflect the expanded reach of KRA in providing capacity building and training not only to the Authority's staff but also to the general public.</p> <p>The inclusion of "other jurisdictions" allows for it to also collaborate with other institutions in other countries especially those that may undertake a similar role to itself.</p>	<ul style="list-style-type: none"> The amendment aligns the current and future anticipated practices of KRA to the KRA Act.



OUR CONTACTS

OUR TAX TEAM CONTACTS

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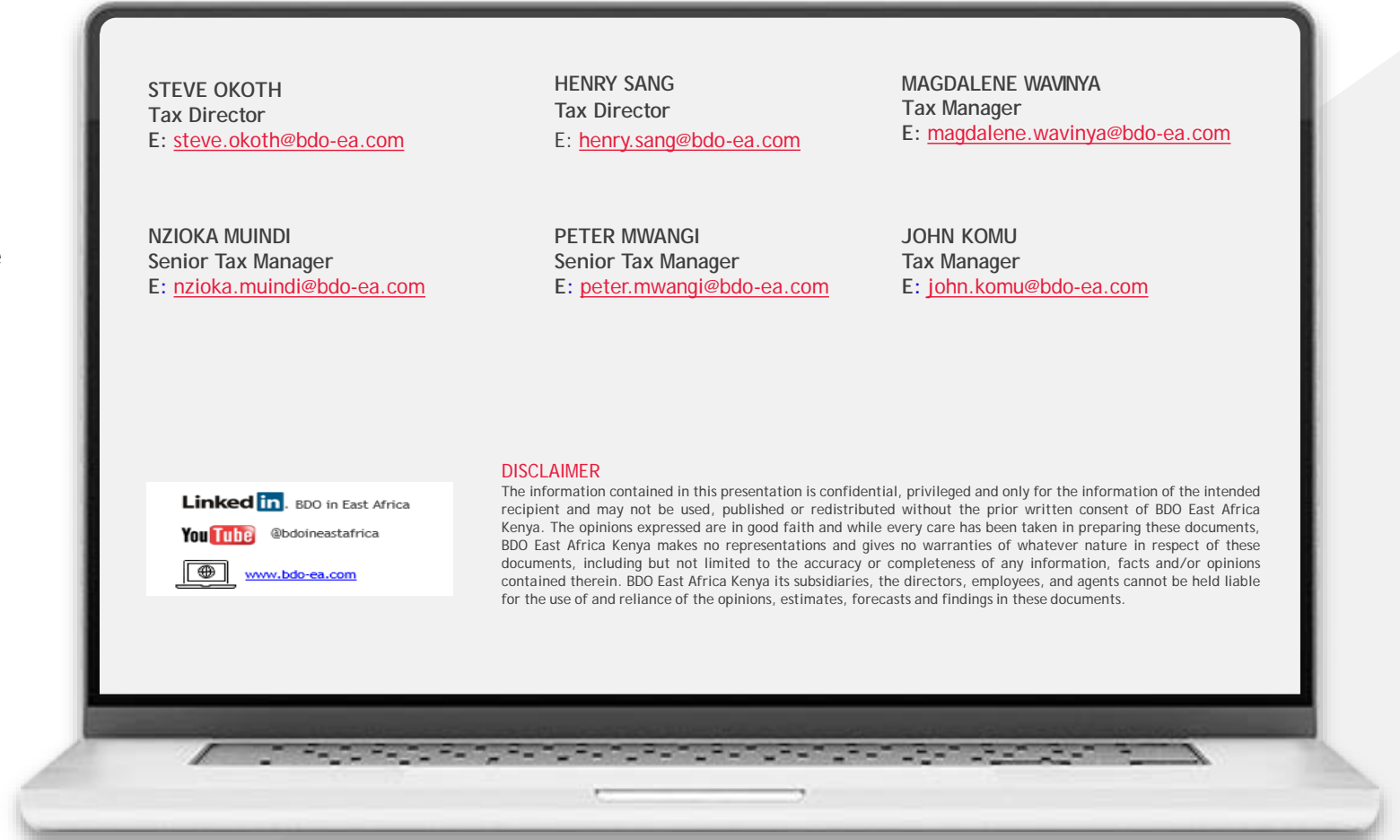
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