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|  | **INCOME TAX ACT**  **Item** | **Current Provision** | **Proposed Amendment by Finance Bill, 2024** | **Issue** | **Impact** | **Proposed Amendment** |
| 1 | Expansion of scope of digital content monetization | The Income Tax Act (“ITA”) as amended by Finance Act, 2023 defines digital content monetisation as offering for payment entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel in any of the forms that are listed under Section 2 of the ITA. | The FB 2024 proposes to amend the ITA to expand activities that would constitute digital content monetisation to also include:  a) creative works;  b) creating or sharing of the material; or  c) any other material that is not exempt under the ITA.  Digital content monetization is subject to withholding tax (WHT) at the rate of 5% and 20% on payments to resident and non-resident persons respectively. The WHT on payment made to non- resident persons is a final tax.  The above proposal demonstrates the Government’s intent to expand the tax base in relation to earnings derived from all forms of digital content monetization.  Proposed effective date: 01 July 2024 |  |  |  |
| 2 | Royalty | The ITA defines Royalty to mean a payment made as a consideration for the use of or the right to use: | The FB 2024 proposes to expand the definition of royalty to also include a payment made as a consideration for the use or right to use any software, proprietary or off the shelf, whether in the form of licence, development, training, maintenance or support fee and includes the distribution of the software.  This proposed amendment if assented into law, will lead to taxpayers being compelled to deduct withholding tax on payments related to any dealings with software at the prescribed rates for royalties. In particular, payments related to the purchase of software will also be subject to withholding tax, which is in direct conflict with the ruling in the High Court decision in Income Tax Appeal no. 8 of 2017 Seven Seas Technologies Limited Vs the Commissioner of Domestic Taxes where the High Court ruled that the purchase of software for resale does give rise to a royalty to the extent that a software reseller does not acquire the rights to enable them to commercially exploit the software. The High Court decision was also pegged on international best practice by applying the Organization for Economic Cooperation and Development Model Tax Convention on Income and Capital which also provides that software distributors only make payment to acquire copies of the copyrighted software and do not exploit the copyright embedded in the software to give rise to a royalty payment.  Proposed effective date: 01 July 2024 |  |  |  |
| 3 | Repeal of Digital Service Tax (DST) and introduction of Significant Economic Presence Tax (SEP Tax) | The ITA provides for Digital Service Tax (DST) on non-residents without a permanent establishment (PE) in Kenya at the rate of 1.5% on the gross transaction value at the point of | The FB 2024 proposes to repeal DST provisions and replace them with Significant Economic Presence Tax (SEP Tax). SEP Tax will be payable by non-residents without PE in Kenya and whose income from provision of services is derived from or accrued in Kenya through a business carried out over a digital marketplace.  Additionally, FB 2024 proposes to amend the definition of a digital market place to also include the following services provided online though an electronic platform: ride hailing services, food delivery services, freelance services, professional services, rental services, task-based services and any other service that is not exempt from tax under the ITA.  SEP tax shall be charged at the rate of 30% on the deemed taxable profit. Consequently, the deemed taxable profit shall be 20% of the gross turnover earned by the non-resident person.  The non-resident person shall file and submit a tax return on or before the 20th day of the month following the end of the month in which the services were offered.  The above proposals, if assented into law, will increase the tax payable by non-resident persons deriving income in Kenya from a digital market place from 1.5% to 6% of gross revenue.  Proposed effective date: 01 January 2025 |  |  |  |
| 4 | Repeal of Tax exemption on income earned under the Ajira digital program | The ITA provides for income tax exemption on income earned by an individual registered under the Ajira digital program for a period of 3 years which commenced on 1 January 2020 upon payment of the registration of KShs 10,000 per year and subject to regulations governing the program. | The FB 2024 proposes to repeal tax exemption on income earned by an individual registered under the Ajira digital program in a bid to maximise tax collections. |  |  |  |
| 5 | Amendments to the Second Schedule | The ITA provide for Investment Deductions (ID) at the rate of 10% in equal instalment on purchase or an acquisition of an indefeasible right to | FB 2024 proposes to allow for ID on purchase or an acquisition of an indefeasible right to use fibre optic cable or spectrum license by a telecommunication operator provided that in the case of spectrum license purchased before 1 July 2024, the deduction shall be restricted to the unamortised portion over the remaining useful life of the spectrum license.  Proposed effective date: 01 July 2024 |  |  |  |
|  | **EXCISE DUTY ACT**  **Item** | **Current Provision** | **Proposed Amendment of Finance Bill, 2024** |  |  |  |
| 6 | Excisable services offered through a digital platform by a non-resident | There is no provision in the EDA. | The FB 2024 proposes to impose excise duty on excisable services offered in Kenya by a non-resident through a digital platform. The excise duty shall be paid by the non- resident person offering the services. |  |  |  |
| 7 | Removal of relief on raw materials and internet data services | 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 | The FB 2024 proposes to repeal this provision. Manufacturers of excisable goods and internet data providers will therefore not be allowed to offset excise duty paid on inputs i.e. raw materials and internet data respectively against excise duty on the finished goods or internet data services supplied.  This is expected to increase excise duty collections for the Government.  Proposed effective date 01 July 2024 |  |  |  |
| 8 | Advertisements on the internet and social media | Excise duty at the rate of 15% applicable on advertisement on television, print media, billboards and radio stations on alcoholic beverages, betting, gaming, lotteries and prizes competitions. | The FB 2024 proposes to additionally subject to excise duty advertisements on the internet and social media relating to alcoholic beverages, betting, gaming, lotteries and prizes competitions. The applicable excise duty rate will be 15%. |  |  |  |
|  | **TAX PROCEDURES ACT**  **Item** | **Current Provision** | **Proposed Amendment of Finance Bill, 2024** |  |  |  |
| 9 | Features of an Electronic Tax | The TPA does not stipulate the information to be contained in an Electronic Tax Invoice. | The Bill proposes to amend the TPA to include identifiable features of a proper Electronic Tax Invoice and which must entail:  (i) the words “TAX INVOICE”;  (ii) name, address and PIN of the supplier and purchaser;  (iii) serial number of the tax invoice;  (iv) date and time which the tax invoice was issued and the supply was made, if it is different from the date the tax invoice was issued;  (v) description of the supply in terms of quantity of goods or type of services;  (vi) details of any discount allowed at the time of supply;  (vii) consideration of the supply;  (viii) tax rate charged and the total amount of tax charged; and  (ix) any other prescribed information  These features mirror the details cited under the Tax Procedures (Electronic Tax Invoice) Regulations, 2024 which were gazetted on 28 March 2024.  Proposed effective date: 01 July 2024 |  |  |  |
| 10 | Integration of KRA’s data management and reporting system with taxpayer’s electronic tax system | The TPA mandates the Commissioner to establish a data management and reporting system to enhance its capability on having visibility of trader transactions through electronic invoices. Upon the successful establishment of the system, the Commissioner will be required to notify the selected taxpayers in writing requiring them to submit the electronic documents through the system. | The FB 2024 proposes that the Commissioner may issue a written notice requiring a person to integrate their electronic tax system with KRA’s data management and reporting system for the purposes of submitting electronic documents. These documents include detailed transaction data such as the names and addresses of each person to whom a payment was made among other details. |  |  |  |
| 11 | PIN registration requirement for remote employees outside Kenya working for Kenya based employers | No express provision | The FB 2024 proposes to have employees working remotely outside Kenya for an employer based in Kenya to possess a KRA PIN. |  |  |  |
|  | **MISCELLANEOUS FEES AND LEVIES ACT**  **Item** | **Current Provision** | **Proposed Amendment of Finance Bill, 2024** |  |  |  |
| 12 | Introduction of Eco Levy | No provision under the current Act. | * The Bill proposes to introduce a new levy, Eco Levy, to be levied on specific goods manufactured locally or imported into the country. The Cabinet Secretary is empowered to make Regulations specific to this Eco Levy. * The Bill proposes to impose Eco Levy on the following ICT apparatus/goods..etc: * Calculating machines and pocket size data recording, reproducing and displaying machines with calculating functions, accounting machines, postage-franking machines, ticket issuing machines and similar machines, incorporating a calculating device; cash registers- incorporating a printing device * Automatic data processing machines and units thereof ; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such as data, not elsewhere specified or included   + portable automatic data processing machines, weighing not more than 10kg, consisting of at least a central processing unit, a keyboard and a display * Transmission apparatus for radio broadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras, digital cameras and video camera recorders transmission apparatus for radio broadcasting or television * Radar apparatus, radio navigational aid apparatus and radio remote control apparatus- other radio navigational aid apparatus * Reception apparatus for radio broadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock- radio- broadcast receivers capable of operating without an external source of power: pocket-size radio cassette players * Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus * reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus: not designed to incorporate a video display or screen * Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus |  |  |  |
| 13 | Increase in Import Declaration Fee (IDF) Rate | IDF is charged on all goods imported into the country for home use at the rate of 2.5% of the customs value and is payable by the importer. | The FB 2024 proposes to increase the IDF rate from 2.5% to 3% of the customs value. |  |  |  |
|  | **Other Miscellaneous Changes** |  |  |  |  |  |
| 14 | Exemptions from data protection principles under the Data Protection Act in the collection of taxes | No provision under the current Act. | The FB 2024 proposes to include an exemption from data protection principles in relation to personal data where it is necessary for assessing, enforcing, or collecting any tax or duty as stipulated in a written tax law. |  |  |  |
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