Association of Women Accountants of Kenya.
AWAK uplifting our world
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19th May, 2023

CLERK OF THE NATIONAL ASSEMBLY

P.O.BOX 41842 – 00200

NAIROBI

Dear Sir,

REF: SUBMISSION OF MEMORANDA ON THE FINANCE BILL 2023

Greetings from the Association of Women Accountants of Kenya (AWAK)!

In response to the opportunity given by the Department Committee on Finance and National Planning to submit written memoranda on the Finance Bill, 2023 we are pleased to give our submission.

We are available for any further consultations that you may need regarding this submission.

Yours Sincerely,

Isabel Juma

Board Chair

INTRODUCTION

The Association of Women Accountants of Kenya (AWAK) is a non-political and non-profit making professional women accountants' organization, which draws its membership from women accountants that have attained full CPA qualifications. In addition, women that have attained CPA Part II are eligible to join as associate members.

AWAK was formed in 1992 to provide a forum for women in accountancy to network, grow and develop in their career, profession, and business so as to contribute to the country's economic development. It was formally registered under the Societies Act in 1994 and officially launched by the then American Ambassador to Kenya, Aurelia E. Brazeal in August 1995.

The Finance Bill 2023

AWAK is in support of the Government and the Bottom-Up Economic Transformation Agenda for inclusive growth as this is an assured way for Kenya to grow into a developed country, with a majority of its citizens being middle class. The 2023 Finance Bill comes at a time of great uncertainty; as major world economies face a myriad of challenges including a runaway inflation. In Kenya, prices of commodities have continued to rise as the shilling depreciates against major world currencies. Kenyans therefore have high expectations on the FY 2023/2024 budget, to provide some relief on the cost of living.

The Kenyan Treasury has to balance between the Government's need for funds to finance its Recurrent, Capital and Financing (Loan Repayments) needs, versus a tax-payer and consumer who feels pushed to the limit.

Income tax was first introduced in Kenya in 1921 and the Graduated Personal Tax (GPT) in 1934. Overtime, post-independence, even with the abolishment of GPT in 1973, time value of money has rarely been taken into consideration in the revision of tax bands.

The World Bank in September 2022 adjusted the extreme poverty line, based on data from 15 low income countries, to US Dollars 2.15 per person per day (https://www.worldbank.org/en/news/factsheet/2022/05/02/fact-sheet-an-adjustment-to-global-poverty-lines),from the previous US Dollars 1.9. Using the May 16th 2023 Central Bank of Kenya Mean rate of 137.1 Kshs / USD; and the Kenya National Bureau of Statistics 2019 Census results (https://www.knbs.or.ke/2019-kenya-population-and-housing-census-results/) where an average household was found to have 3.9 members; this would mean any household with a monthly income of Kenya

Shillings 2.15*137.1*3.9*30 days = 34,487.50 should be considered as living in extreme poverty, therefore not liable for any income tax. The current bill however proposes to have someone earning an income of Kshs 32,334 and above join the 30% tax bracket, previously considered the highest tax bracket.

We therefore propose a review of the tax brackets based on available World Bank statistics, where those earning Kshs. 35,000 a month are not liable for income tax and the 10% tax band begins for those earning above that amount. Further, the use of statistics to have the 30% tax band be for people earning at least Kshs. 100,000 a month.

The Kenya Government has continued to put a lot of emphasis on Pay As You Earn (PAYE) which is easier to collect. However, this only captures the few formally employed Kenyans as compared to consumption taxes like VAT which can net the entire country. In the financial year 2021/2022 The Kenya Revenue Authority collected Kshs. 461.815 Billion in PAYE from few employees as compared to Kshs. 244.693 Billion in VAT from 50 Million Kenyan Residents.

In a global perspective, a number of countries with high GDPs either don't charge any personal income tax or charge as low as a maximum of 15%. Such countries have concentrated on encouraging consumption and investment from where government then raises its revenue.

The Association of Women Accountants of Kenya, has gone through the Finance Bill 2023 and makes the following submissions:

NO	SECTION/AREA	ISSUE OF CONCERN	RATIONALE/LIKELY IMPACT	RECOMMENDATION
19 & 20	**Income Tax Act CAP 470** SECTION 31(B)(1) and Section 31B(3)	**Housing Fund Levy:** The Bill proposes the introduction of a 3% Housing Fund Levy for all employees, capped at Kshs 5,000 from both employer and employee. The Housing Fund levy is geared to create a fund for affordable housing for qualifying citizens. These are	*a)* Any increase in taxes and/or levies will put pressure on salaried/wage workers amid stagnant wages and high inflation over the past three years. Changing it to voluntary contribution will enable workers to meet running obligations on mortgage payments, school fees, medical expenses, the high cost of power and feed their families, as well	a) Change the conditions to a voluntary scheme. The legislation governing the administration and the proposition of the same should convince the population to join the scheme if more attractive compared to existing options. b) Exclude those that do not qualify for affordable housing scheme from the

		citizens whose monthly earnings are within the bracket of Kshs 50,000 and Kshs 149,999. Key issues with the proposed funds include: a) The requirement that all employees contribute the Housing Fund Levy even if they do not qualify for Affordable Housing Scheme. b) That for those who do not qualify for Affordable Housing Scheme, the amount is a saving and they can access after 7 years, net of administrative expenses and subject to return on the funds. c) That this is not a tax but a saving The Legislation does not consider the following: a) That 70% of Kenyans are rural population and own homes and therefore do not require the Housing Fund b) It is discriminative as it forces employees who do not qualify for the Affordable Housing Scheme to contribute irrespective of their current needs and commitments. c) Does not address the root cause of issues leading to many Kenyans not owning homes. This include	as build capital that will stimulate economic growth. b) The proposed actions are a diversion from the new government's manifesto, which was to expand the tax base as opposed to burdening existing taxpayers with more taxes. c) Forcing this deduction on the working population will demoralize them and lead to poor service delivery in public sector and tax avoidance as well as increased ills such as corruption. This is because the workers will have increased focus on alternative avenues to meet high cost of living and may slide further to poverty. d) Suspending the fund or making it voluntary will provide an opportunity to review the alternative avenues for Kenyans to access affordable housing. This will also inspire confidence of the population by enabling choice based on individual or professional assessment of the benefit of the scheme before joining the scheme or working with the alternative avenues. e) The proposal will also overburden employers with increased cost of employment and may lead to loss of current employment opportunities.	contributions. These are likely to own homes already, are not interested in owning homes or are servicing mortgages. c) Engage industry stakeholders on what needs to be done to drive affordable housing in the economy. This may include enacting policies to reduce cost of building materials and land and engaging with industry stakeholders on framework. d) Strengthen existing housing schemes, e.g. through reducing the limit for the regulated funds, REITS from Kes 5M to lower amounts to include more Kenyans. This way, investors will be able to convert into units. e) Reconsider impact of any increased deductions/ taxation on employment income in the Finance Bill 2023. The middle class are already vulnerable from the stagnating wages amidst rising cost of living and high taxes on both earnings and consumption, and at least a third of them are classified as "floating middle class" as they could easily slide to low income earners and poverty. f) Put in place a framework that works equally for the formal and informal sector.

		lack of access to financing for the informal sector, the extremely high cost of materials, lack of favorable policies and tax reliefs.		
20	**Income Tax ACT CAP 470** SECTION 12C	**Turnover Tax** The Finance Bill proposes to reduce the threshold for resident persons to qualify for Turnover tax to those whose turnover from business is more than Kshs 0.5M but does not exceed Kshs 15M. Further, Finance Bill proposes to increase Turnover tax rate from 1% to 3%.	Increasing the tax rate to 3% on a tax that is based on gross turnover, in an environment of high operating cost will put pressure on small businesses and may: - Reduce the desire of micro enterprises to embrace the turnover tax as they view the new rates as punitive. - Drive the enterprises with thin margins out of business. If effected as is, the Government may negatively affect SMEs who form 98% of the Kenyan Business community and contribute 30% of GDP	The reduction in threshold is acceptable since it ensures that only Micro and Small Enterprises are considered. Maintain the turnover tax rate at 1% to encourage the micro enterprises to embrace the formal sector and formalize businesses and manage costs in a high-cost operating environment. Since this tax is based on gross turnover, a 3% rate or 200% increase would be significant for such businesses that mostly operate on thin margins.
24 b (i) 1	**Income Tax Act CAP 470** **Third schedule**	**Change in the rate of tax as follows:** On the first Kshs. 288,000 10% On the next Kshs. 100,000 25% On the next Kshs. 5,612,000 30% On all income over Kshs. 6,000,000 35% a) The proposed tax rates will put someone earning a gross income of Kshs 32,334 per month and above on the 30% or high income earner tax bracket.	a) Lower personal income taxes will lead to higher purchasing power, build-up of capital and savings, ability of employees to acquire homes and accelerate economic growth. On the contrary, high tax rates stifle economic growth and increase poverty rates in a country. For example, African countries like Seychelles and Mauritius are ranked at 52 and 73 in GDP per Capita globally yet their maximum personal income tax rates are 15%.	a) The Government is urged to cut down on its expenditure especially on non-critical capital and recurrent costs, while giving tax cuts and reliefs to tax payers to enable an economic recovery. b) The Government should widen the tax base and target other non-traditional sources to finance the budget. These include the informal sector and will ensure each Kenyan pays their fair amount of taxes.

		b) Kenyan tax rates have not factored in inflation over time and the proposals to expand the brackets and adjust the 30% threshold to higher income earners. c) There is an over-reliance by successive governments on PAYE and the formally employed as compared to consumption taxes and the informal sector. In the FY 2021/2022 KRA collected Kshs. 461.815 Billion in PAYE from 5.6 million Kenyans compared to Kshs. 244.693 Billion in VAT from 50 million Kenyans.	b) Employees earn one off payments annually which may push their income to the 35% tax bracket but their total annual income qualifies them for a lower tax bracket. This will lead to many tax refund applications, and a frustrated tax-payer	c) To enable predictability which is one of the principles of a good tax system, laws should be enacted to ensure tax rates remain static for 3-5 years.
55	**Income Tax Act CAP 470** **SECTION 42 C**	**WHT on rental income and appointment of property agents as tax agents**	While any move to bring more Kenyans to the tax base is laudable, shifting of compliance burden to property agents will increase their cost of doing business. The following issues are highlighted: a) The compliance cost and burden on the requirement to deduct, file and remit the tax within twenty-four hours after making the deduction will lead to non-compliance and tax evasion. b) Most small scale agents may not have the necessary skills and knowledge on how to effect this requirement, and may end up out of business.	a) We propose a requirement that all rental income should be paid through the banks which will enable the Income Tax Commissioner map out all taxpayers and expected tax revenues. b) There should also be a national deadline for payments of rent to landlords for example 5th or 10th of each month which will be known as an obligation by tenants and will ensure landlords have the funds to pay taxes by the due date.

			c) Some rogue agents may not submit deductions leading the rental property owners with tax bills. On the other hand, the proposal to reduce Monthly Rental Income Rates to 7.5% shows the governments' commitment to affordable housing, and will also encourage more property owners to pay taxes.	
PART III 36 (a) (1) & (b) (3)	**Tax Appeals Tribunal Act CAP 435** **Section 32**	**Requirement to deposit 20% of the disputed amount before lodging an appeal at the High Court** **Timing of the refund of the deposit**	a) If enacted, this proposal will impose a huge cash outflow especially if the amount involved is high. Not all affected taxpayers have the capability to pay the 20% deposit. b) This proposal is against the tenets and law of Fair Administrative Action in that tax payers are required to pay upfront to access justice and even where the ruling is in favor of the tax-payer, KRA is not required to pay interest on such deposits. c) The Commissioner's track record of processing refunds is ordinarily pegged availability of funds. d) The proposal conflicts with a February 17, 2023, Supreme Court ruling by Deputy Chief Justice Philomena Mwilu that prohibited	Our proposal is: a) To make such deposits as minimal as possible – equal to court filing fees, and to have an independent third party (perhaps the court) such deposits as requiring a taxpayer to deposit funds with the commissioner who is the adversarial party is unfair. b) Where the commissioner lodges an appeal at the high court, he/she should also be required to deposit using the same criteria c) Any such funds to earn the tax payer some interest based on market rate to be paid to the tax payer incase the ruling is in their favor

			such preconditions on suits to be heard in court.	
19 & 20	**Income Tax Act CAP 470** **SECTION 31(A)**	**Post-Retirement medical fund relief:** The Bill proposes the introduction of a relief on contributions made by a resident person towards a post-retirement medical fund. The value of a proposed relief is 15% of contribution capped at Kshs. 60,000	We laud this move. Medical insurance cover is one of the key pillars of successful retirement. According to the April 2022 report by players in the pension industry, saving through a stand-alone post-retirement medical funds has suffered a low uptake three years after coming into effect due to conflicting budgetary needs and inadequate awareness campaigns. Post-retirement medical fund (PRMF) Regulations that were set up in 2018 allow pension schemes and employers to set up medical funds for employees to save post-retirement health insurance.	Relief on contributions will increase voluntary contributions towards such funds. Findings of a survey by Strathmore university and Enwealth Financial services showed that about 41% of retirees pay for medical bills out of pocket. The data showed that a third of pensioners have private medical insurance, with a fifth relying on National Health Insurance Fund (NHIF). Due to high risk, older people have to pay higher premiums to get medical insurance with some service providers not offering medical cover to people aged above 65 years. We therefore propose that the government increases the relief amount to encourage such saving.
20	**Income Tax Act CAP 470** **SECTION 35**	**Proposal: Deduction of withholding tax from Sales promotion, Marketing, Advertising services and digital content monetization.** Introduction of withholding tax on sales, promotion and advertisement paid to resident persons in excess of Kshs 24,000 per month at the rate of 5% of the gross amount and;	The move is progressive, as it aims to bring more businesses to the tax base. However, if effected as is, the move may negatively affect and discourage young upcoming SMEs	a) The is need to provide the threshold for taxable amount to ensure that the small-scale business engagements are not killed before they are stable. b) There is need for guidance on who should register for tax in case of getting minors in the tax ambit

		To charge withholding tax at 15% on digital content monetization. This includes offering payment for entertainment, social, literal, artistic, educational or any other material electronically through any medium or channel, in form of website advertisement, social media platform, brand sponsorship, affiliate marketing, subscription services or merchandise sales.		
PART II 28	**VAT Act CAP 476**	The Bill seeks to delete Sections 5 (2)(aa) and (2)(ab) that apply VAT at 8% on goods listed in Section B of Part I of the First Schedule of the VAT Act - petroleum products, LPG, including propane. **Proposal to subject petroleum products to VAT at 16% and to exempt liquefied petroleum gas (LPG)**	Any increase in the cost of petroleum products have an impact on electricity costs, cost of manufacturing and cost of transport, leading to even higher prices of necessities including food and other manufactured goods. Kenya already has the highest price of fuel and electricity in the region compared to other countries with sea ports, and it is time to find ways of reducing our cost of production to make Kenyan goods competitive.	With the current high inflation rates, any increase in the cost of goods will be unbearable to the common Kenyan. We recommend that the government looks for ways of reducing the cost of fuel and electricity charges. Reduction or elimination of taxes on fuel will greatly ease the inflationary pressure on our economy.
52	**Tax Procedures Act No. 29**	**Security for unpaid taxes** The Bill seeks to amend Section 40 of the Tax Procedures Act, which empowers the Commissioner to utilize a taxpayer's property as security for any unpaid taxes currently, the commissioner is required to notify a taxpayer 7 days from the date he notifies the Registrar	The proposed amendment seeks to shift the requirement to notify a taxpayer that their property will be used as security until after the registration of the security has been done. This regulation will be prone to abuse and will contravene a taxpayers basic rights as provided under The Fair Administrative Action Act No. 4 of 2015, as a taxpayers	Our recommendation is for Section 40 of the Tax Procedures Act to remain as is, seeing as currently, a tax payer is given a very limited time (7 days) within which to file any objection.

		of the property and intent to register the security. The proposed amendment states that the Commissioner shall inform a taxpayer within 14 days of the registration of the security on their property.	assets can be attached before they are notified of the intention to register the security.	