Afronomicslaw Submission on the Kenya Finance Bill 2024

By:

Afronomicslaw

AFRONOMICSLAW SUBMISSION ON THE KENYA FINANCE BILL 2024

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Executive Summary

The Kenya Finance Bill 2024 proposes numerous progressive proposals that are commendable, including a minimum top-up tax to ensure that multinational companies pay taxes in Kenya, advance pricing agreements, and exempting pension benefits from income tax, among others. However, some of the proposals raise a range of concerns. Our submission focuses on four key areas, which we discuss in detail and summarize in a table. Our key recommendations are summarized below:

1. **Imposing an Eco levy on specified goods (Clause 45 of the Finance Bill)**

- Reject the Eco levy on items Kenyans use on a day-to-day basis, such as batteries, diapers, phones and office equipment, since this is likely to worsen the financial strain on them.
- Ensure that environmental taxes target wealthy polluters rather than ordinary citizens who are already facing the financial toll of the current economic downturn.
- If the Eco levy is maintained for items other than those Kenyans use daily, the Finance Bill should indicate the specific environmental or social goals which will be met by the resources collected will be used.

2. **Penalty of Kshs. 2 million for failure to comply with tax procedures (Clause 57 of the Finance Bill)**

- Reject the harsh and unnecessary penalty of Kshs. 2 million a month for failure to comply with the requirement to integrate the electronic tax system into the KRA data management and reporting system because this is primarily going to affect informal sector individuals and enterprises.

- Support informal sector workers during the current economic downturn with incentives to ensure their businesses survive this downturn and thrive in the future. This is a superior strategy for generating revenues for the government.

3. **Specific Value Added Tax (VAT) proposals.**

a. Removal of VAT exempt status on ADL 25-40gsm, a substance used in hygiene products such as diapers and sanitary towels (Clause 34 (a) (i) (L) of the Finance Bill)

- Maintain the VAT exempt status of ADL 25-40gsm to ensure that hygiene products such as sanitary towels and diapers remain affordable.

a. Removal of VAT exempt status from some banking services (Clause 34 (b) (i) of the Finance Bill)

- Maintain the VAT exempt status of the above financial services in line with Kenya's plans for financial inclusion.

4. **Specific excise duty proposals**

a. **Increase in excise duty on fees charged for money transfer services by cellular phone service providers from 15% to 20% (Clause 42 (b) of the Finance Bill)**

- Reject the proposal to increase excise duty on fees charged for money transfer services by cellular phone service providers.

b. Increase in excise duty on internet services (Clause 42 (b) of the Finance Bill 2024)

- Reject the proposal to increase excise duty on internet services to ensure that high costs of internet do not inhibit access for all Kenyans.

- Reject the proposal to phase out relief to internet service providers under Clause 39, which is essential to reduce the internet costs paid by the final consumers.

Introduction

The Kenya Finance Bill 2024 proposes numerous taxation and administrative reforms across the different taxation laws. There are numerous progressive proposals under the Finance Bill 2024 which are commendable, including minimum top up tax to ensure that multinational companies pay taxes in Kenya, advance pricing agreements, and exempting pension benefits from income tax, among others. However, some of the proposals raise a range of concerns. These include motor vehicle taxes, an increase in excise duty for money transfer services, changing the VAT exempt status of bank services to standard rating and imposing an Eco levy on some items which Kenyans use daily.

Our submission focuses on four key areas, which we discuss in detail and summarize in the table below. These are:

1. Imposing an Eco levy on specified goods;

2. Penalties for failure to comply with tax procedures;

3. Specific Value Added Tax (VAT) reforms; and

4. Specific excise duty reforms.

Key issues of concern arising from specific revenue proposals under the Finance Bill 2024

1. **Imposing an Eco levy on certain specified goods (Clause 45 of the Finance Bill)**

It is commendable that Kenya is taking strides in meeting its environmental goals in line with its laws and policies including the Green Economy Strategy and Implementation Plan. Taxation is one of the fiscal tools that the Kenyan government pledged to use to promote a green economy including eco-taxes. The proposed Eco levy is therefore consistent with the government's green transformation agenda.

Finance Bill 2024 amends the Miscellaneous Fees and Levies Act to introduce an Eco levy on specific goods, including batteries or dry cells, office machines, phones, microphones, transmission and reception apparatus for radio and TV broadcasting, monitors and projectors, rubber tyres, some diapers, plastic packing materials among others. The impact of the Eco levy is likely to worsen the financial toll on Kenyan citizens, who are already shouldering a heavy tax burden. For instance, as indicated by the Associated Battery Manufacturers (EA) Ltd, the price of batteries is likely to double with the price of a 12kg car battery increasing from Kshs. 8,500/= to Kshs. 17,500/= while solar batteries are likely to become unaffordable to majority of Kenyans given the estimated additional cost of Kshs. 45,000/= for a 60kg battery.[1]

The imposition of this Eco levy, in addition to other existing and proposed taxes, such as a motor vehicle tax, is likely to increase the cost of living, causing significant financial strain since at least 70% of Kenya's population lived on less than $3.65 a day in 2023. [2] Currently, Kenya is facing an economic downturn due to the high debt burden and servicing costs exacerbated by a high cost of living. While it is important for Kenya to take steps towards transitioning to a green economy, these efforts ought to be carefully weighed to ensure that they are just and equitable and do not exacerbate poverty and inequality among the citizens. [3]

A key concern is how the revenues collected will be spent. *It is highly advisable for such revenues to be channelled towards meeting environmental goals and targets, including building climate resilience and investment in climate mitigation*. However, there is no guarantee that this is the intended purpose of this levy. Without any legislative proposals and commitments on the specific use of these resources, they are likely to be spent on repaying costly debt obligations.

In addition, levying a new Eco levy to promote a green economy creates uncertainty about the government's position on environmental protection. Given a very similar proposal has been on and off the table before, its appearance in the 2024 Finance Bill continues a streak of uncertainty in Kenya's tax regime. For instance, in the Finance Act of 2023, the supply of electric buses, electric bicycles and solar and lithium-ion batteries were given a zero-rated VAT status. However, in the 2024 Bill, the status has reverted the status of these supplies to standard rating. [4]

This contradictory stance points towards the high likelihood that the aim of these proposed taxation measures is to increase revenues, by any measures possible, to meet debt obligations rather than invest in environmental protection as pledged in domestic and international laws and policies. This sets a problematic trend for Kenya's fiscal planning and environmental protection.

Recommendations:

i. Reject the Eco levy on items Kenyans use on a day-to-day basis such as batteries, diapers, phones and office equipment since this is likely to worsen the financial strain on them.

ii. Ensure that environmental taxes target wealthy polluters rather than ordinary citizens who are already facing the financial toll of the current economic downturn.

iii. If the Eco levy is maintained for items other than those Kenyans use daily, the Finance Bill should indicate the specific environmental or social goals which will be met by the resources collected will be used.

1) Penalty of Kshs. 2 million for failure to comply with tax procedures (Section 57 of the Finance Bill)

Section 75 of the Tax Procedures Act provides for an electronic tax system and is the basis upon which the Electronic Tax Invoice Management System (eTIMS) was created. Section 57 of the Finance Bill empowers KRA to require a person to integrate the electronic tax system into the KRA data management and reporting system created under Section 59A of the Tax Procedures Act. Such a person would be required to submit data on transactions in the ordinary course of business, and failure to do so would attract a penalty of Kshs. 2 million per month. This proposed penalty is likely to affect small businesses and workers in the informal sector the most.

Kenya has been aggressive in taxing small scale farmers, producers and people operating small businesses. However, there are hardly any policies being pursued to support their growth and development in order to be able to generate these revenues. There is a major concern around transparency in the use of resources and benefits derived by informal sector workers from paying taxes across the African continent compared to their formal sector counterparts. [5] Without a clear indication of how they will derive benefits from their taxes, the current proposal and harsh penalty of Kshs. 2 million a month will put Kenyans working in the informal sector out of business or encourage them to operate in the shadow of the law.

This approach of imposing harsh penalties to ensure compliance is based on a false presumption that the informal sector does not pay taxes or is unwilling to pay taxes. 6 Studies have shown that workers in the informal sector contribute significantly to revenues (both directly and indirectly) to the growth of the economy and this should be recognised and acknowledged in adopting fiscal policies. [7]

In addition, given the difficult economic situations in Kenya, informal sector workers, some of whom earn a small minimal income on an irregular basis, require support for their well being and livelihoods. This proposed approach of setting harsh penalties is likely to disproportionately affect this category of workers who are at risk of running out of business, exposing them to even more financial insecurity.

Recommendations:

i. Reject the harsh and unnecessary penalty of Kshs. 2 million a month for failure to comply with the requirement to integrate the electronic tax system into the KRA data management and reporting system

because this is primarily going to affect the informal sector individuals and enterprises.

ii. Support informal sector workers during the current economic downturn with incentives to ensure their businesses thrive. This is a superior strategy for generating revenues for the government.

3. Specific Value Added Tax (VAT) proposals.

This submission highlights some VAT proposals which have problematic implications for Kenyans:

a) Removal of VAT exempt status on ADL 25-40gsm, a substance used in hygiene products such as diapers and sanitary towels (Clause 34 (a) (i) (L) of the Finance Bill)

This proposal would increase the cost of this substance, which would typically be passed on to consumers of essential products such as diapers and sanitary towels. This would disproportionately affect consumers who rely on these products to live in dignity, especially girls, women, older persons and persons with disabilities (PWDs). Studies have revealed that 65% of Kenyan women and girls cannot afford sanitary towels. [8] The Kenya Ministry of Education estimates that girls from poor families miss 20% of their school days annually due to a lack of sanitary towels.[9] Ugandan legislators adopted a similar approach by imposing VAT on diapers last year on the premise that they are luxury items but have since expressed regret over this decision given the negative implications, especially for older persons and PWDs.[10] The increase in the price of these essential products is likely to further inhibit access for consumers who rely on them, further perpetuating existing inequalities. It would also likely have an adverse impact on school attendance for girls whose families would be unable to afford sanitary towels at higher prices.

Recommendations:

i. Maintain the VAT exempt status of ADL 25-40gsm to ensure that hygiene products such as sanitary towels and diapers remain affordable.

a) Removal of VAT exempt status from some banking services (Clause 34 (b) (i) of the Finance Bill)

The Bill proposes the removal of VAT exempt status for the following financial services:

- Issuing of credit and debit cards;
- Telegraphic money transfer services;
- Foreign exchange transactions, including the supply of foreign drafts and international money orders;
- Cheque handling, processing, clearing and settlement, including special clearance or cancellation of cheques;
- Issuance of securities for money, including bills of exchange, promissory notes, money and postal orders;
- The assignment of a debt for consideration; and
- The provision of financial services on behalf of another on a commission basis.

According to the 2021 World Bank Global Findex Database, 79% of Kenyan adults have bank accounts.[11]. This proposal would raise the cost of these financial services to the detriment of the consumers. It risks reversing the gains Kenya has attained in financial inclusion over the years. This move would indicate that the efforts to ensure that Kenyans are banked were aimed at increasing tax collection rather than achieving financial inclusion and its associated benefits, such as poverty reduction. A better way to address the underlying problems in the banking market for Kenyans is to support their enterprises so that they move away from irregular and precarious incomes.

Recommendations:

i. Maintain the VAT exempt status of the above financial services in line with Kenya's plans for financial inclusion.

4) Specific excise duty proposals

This submission highlights some excise duty proposals which have problematic implications for Kenyans.

a) Increase in excise duty on fees charged for money transfer services by cellular phone service providers from 15% to 20% (Clause 42 (b) of the Finance Bill)

The increase in the tax charged for money transfer services would increase the cost of these services for Kenyans. Kenya is recognized as a leader in promoting financial inclusion in Africa, and the uptake of mobile money has been hailed as a success story.[12] As of 2022, M-Pesa alone boasted of over 30.5 million customers out of a population of 50 million. [13] These services have contributed to gender equality by serving as a financial platform for Kenyan women, especially in the informal sector, who were previously financially excluded in Kenya. [14] This proposal also raises serious equity concerns. Studies on the impact of the increase in mobile money taxes in Kenya since its introduction in 2013 have revealed that they have a more detrimental impact on poorer households.[15] This tax has been increasing over the last decade from 10% in 2013, 12% in 2018, 15% in 2023 16 thus the proposed increment to 20% would represent a 100% percentage increase from when the tax was introduced. This 5% increase could potentially result in reduced mobile money transfers, affecting both people who rely on mobile money for their financial needs, especially low-income groups, as well as those who rely on this business for their livelihoods, such as mobile money agents.

Recommendations:

i. Reject the proposal to increase excise duty on fees charged for money transfer services by cellular phone service providers.

a) Increase in excise duty on internet services (Clause 42 (b) of the Finance Bill 2024)

This proposal to increase excise duty on internet data services from 15% to 20%, coupled with another phase out relief for suppliers of internet data services under Clause 39 of the Bill, would significantly raise the cost of internet services for the final consumers. The current high costs of the internet have made it a luxury which remains inaccessible to many Kenyans. [17]

According to World Bank data, the number of Kenyans using the internet in 2021 (29%) was much lower than other African countries such as South Africa (72%), Ghana (68%), Egypt (57%), and Nigeria (55%). 18 The proposed tax increment is likely to further inhibit access to the internet for Kenyans who are already paying more for their internet than citizens of other African countries. [19] Specific groups are likely to feel the impact of this tax more severely, particularly school going children, university students and small businesses. [20] The National Information, Communications and Technology (ICT) Policy prioritizes access to quality and affordable internet for all Kenyans to boost the knowledge economy. The Kenyan government has been recognized as a leading ‘tech hub’ in Africa, [21] a position it risks losing through this tax proposal which could increase costs and cripple the growth of small businesses. As an alternative, the Kenyan government should reduce internet costs as an incentive to boost the growth of these businesses, which, in turn, will generate revenues for the economy.

Recommendations:

i. Reject the proposal to increase excise duty on internet services to ensure that high costs of internet do not inhibit access for all Kenyans

ii. Reject the proposal to phase out relief to internet service providers under Clause 39, which is essential to reduce the internet costs paid by the final consumers

Summary of our submission on the proposed tax reforms in the Kenya Finance Bill 2024

Issue and provision of the Finance Bill	Proposed reform	Impact of the amendment	Recommendations

Imposing an Eco levy on certain specified goods (Clause 45)	Introduction of an Eco levy	The imposition of this Eco levy, in addition to other existing and proposed taxes, such as a motor vehicle tax are likely to increase the cost of living, causing significant financial strain since at least 70% of Kenya’s population lived on less than \$3.65 a day in 2023. It is highly advisable for such revenues to be channeled towards meeting environmental goals and targets, including building climate resilience and investment in climate mitigation. However, there is no guarantee that this is the intended purpose for this levy.	Reject the Eco levy on items Kenyans use on a day-to-day basis such as batteries, diapers, phones and office equipment since this is likely to worsen the financial strain on them. Ensure that environmental taxes target wealthy polluters rather than the ordinary citizens who are already facing financial toll of the current economic downturn. If the Eco levy is maintained for other items, other than those Kenyans use daily, the Finance Bill should indicate the specific environmental or social goals which will be met by the

Penalty of Kshs. 2 million for failure to comply with tax procedures (Clause 57)	Introduction of the requirement to integrate the electronic tax system to the KRA data management and reporting system created under Section 59A of the Tax Procedures Act. Failure to comply with this requirement will attract a penalty of Kshs. 2 million.	This proposed penalty is likely to affect small businesses and workers in the informal sector the most. This proposed approach of setting harsh penalties is likely to disproportionately affect informal sector individuals and enterprises who are at risk of running out of business, exposing them to even more financial insecurity.	Reject the harsh and unnecessary penalty of Kshs. 2 million a month for failure to comply with the requirement to integrate the electronic tax system into the KRA data management and Reporting system because this is primarily going to affect informal sector individuals and enterprises. Support informal sector workers during the current economic downturn with incentives to ensure their businesses thrive. This is a superior strategy for generating revenues for the government.

Specific VAT proposals	Removal of VAT exempt status on ADL 25-40gsm (Clause 34 (a) (i) (L) of the Finance Bill)	This proposal would increase the cost of this substance, which would typically be passed on to consumers of essential products such as diapers and sanitary towels. This would disproportionately affect consumers who rely on these products to live in dignity, especially girls, women, older persons and persons with disabilities (PWDs). It would also likely have an adverse impact on school attendance for girls whose families would be unable to afford sanitary towels at higher prices.	Maintain the VAT exempt status of ADL 25-40gsm to ensure that hygiene products such as sanitary towels and diapers remain affordable.

Specific VAT proposals	Removal of VAT exempt status from some banking services (Clause 34 (b) (i) of the Finance Bill)	This proposal would raise of the cost of these financial services to the detriment of Kenyans. It risks reversing the gains Kenya has attained in financial inclusion over the years.	Maintain the VAT exempt status of the above financial services in line with Kenya's plans on financial inclusion.

Specific excise duty proposals	Increase in excise duty on fees charged for money transfer services by cellular phone service providers from 15% to 20% (Clause 42 (b) of the Finance Bill)	The increase in the tax charged for money transfer services would increase the cost of these services for Kenyans. Specifically, with respect to mobile money services, there is a huge risk of reversing financial inclusion gains. This proposal also raises serious equity concerns. Studies on the impact of increase in mobile money taxes in Kenya since its introduction in 2013 have revealed that they have a more detrimental impact on poorer households. Reject the proposal to increase excise duty on fees charged for money transfer services by cellular phone service providers.	Reject the proposal to increase excise duty on fees charged for money transfer services by cellular phone service providers.
	Increase in excise duty on internet services	This proposal to increase excise duty on internet data services from 15% to 20%, coupled with another phase out relief for suppliers of internet data services under Clause 39 of the Bill, would significantly raise of the cost of internet services for	Reject the proposal to increase excise duty on internet services to ensure that high costs of the internet do not inhibit access for all Kenyans. Reject the proposal

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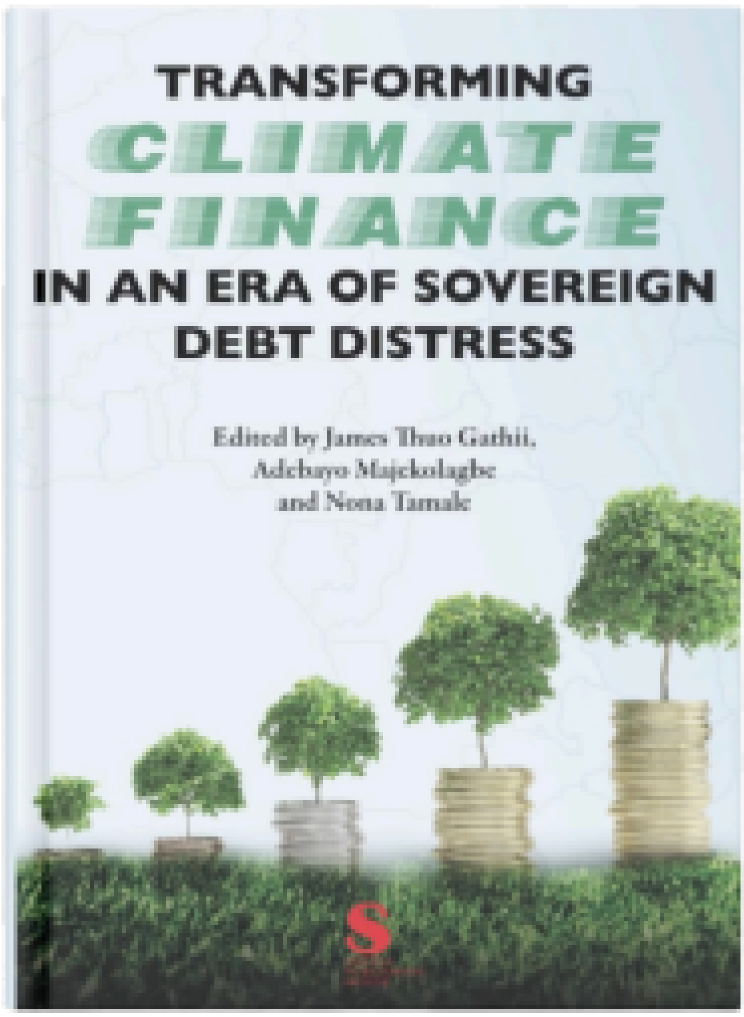

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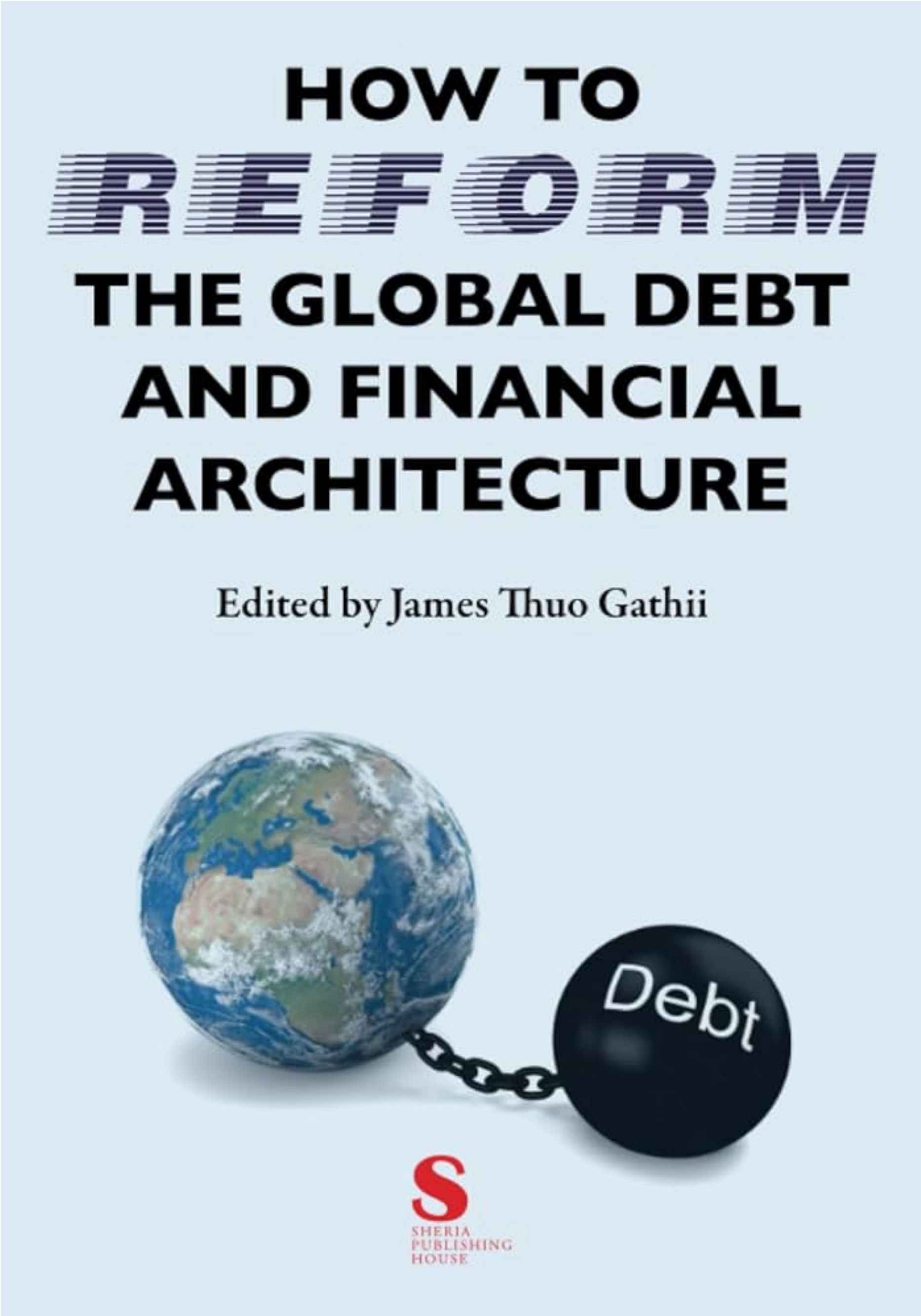

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