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**Brief Overview of Finance Act 2023 for Kenya**

The Finance Act 2023 was assented by the President on 26th June 2023. This article aims to provide some insight to our stakeholders having dealings in Kenya on the notable changes that might possibly impact them in the future.

A recap of such key amendments as laid down in the Finance Act 2023 have been outlined below.

**Capital Gains Tax**

The amendments brought to Capital Gains Tax (CGT) are of paramount importance for foreign investors.

Last year, the Finance Act 2022 amended the Kenyan Income Tax Act to increase the Capital Gains Tax rate from 5% to 15% with the aim to align the Kenyan CGT rate with other countries in the region. The change became effective as from 1st January 2023.

One year later, the underlying provisions of CGT were reviewed with an expanded scope.

* As per the new provisions of the Finance Act 2023, gains resulting from the disposal of shares by the transferor who derives more than 20% of his value directly or indirectly from immoveable property located in Kenya at any time during the 365 days preceding the disposal, will be subject to capital gains tax in Kenya.
* A non-resident person holding at least 20% shareholding in a Kenyan based entity at any time during the 365 days preceding the disposal, will be liable to capital gains tax in Kenya upon disposal of his interest.
* The Commissioner should be notified in writing by the transferor where there is a change of at least 20% in the underlying ownership of the property.
* The Authorities would need to shed light on the tax obligation which will rest either on the non-resident person disposing his interest or the Kenyan entity whose shares are being transferred when the disposal occurs outside Kenya. Either party would be obliged to settle the capital gains tax liability to the Kenyan Authorities.

*Some other inclusions within the ambit of CGT are as hereunder:*

* Gains from transfer of property based in Kenya where such property is owned by partnerships;
* Gains on internal reorganizations will only be exempted on the condition that the group has existed for at least 24 months prior to the transfer;
* Capital Gains Tax is now introduced where a transfer of property which was not initially subject to CGT is subsequently transferred in a taxable transaction within a period of less than 5 years. Capital Gains Tax will be levied and the adjusted cost in the subsequent transfer will be based on the original adjusted cost in the initial transfer;
* The due date for CGT payment will be the earlier of receipt of full purchase price by the transferor or registration of the transfer.

**Thin Capitalisation/Interest Restriction**

* Interest deductibility is normally capped at 30% of earnings before interest, tax, depreciation and amortization (EBITDA). Under the amended provisions of the Finance Act 2023, the interest restriction will only apply to interests paid/payable to non-resident individuals and entities involved in financing arrangements.
* Effective as from 1st January 2024, there will no longer be any restriction on deductibility when interests are paid/payable on local borrowings.

**Permanent Establishments**

* Under the current rule, profits attributable to a Permanent Establishment in Kenya are taxed at the rate of 37.5%.
* Effective as from 1st January 2024, the above corporate tax rate will be reduced to 30% but the Permanent Establishment will also be liable to a tax of 15% on repatriated income.

Should you require any additional clarification, please do not hesitate to get in touch with our tax advisory team on taxadvisory@dtos-mu.com.

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