



Legal Alert

Finance Act, 2023

20 August 2024

The Supreme Court of Kenya (**SCOK**) issued conservatory orders on 20 August 2024, suspending and staying the orders of the Court of Appeal declaring the Finance Act, 2023 (**Act**) unconstitutional, and void *ab-initio*.

This is pending the hearing and determination of the appeal filed by the Cabinet Secretary for the National Treasury & Planning and four others, challenging the judgement of the Court of Appeal issued on 31 July 2024 declaring the entire Act unconstitutional.

The consolidated appeals will be heard virtually on 10 and 11 September 2024 at 9 am each day.

What Does This Mean?

The Court of Appeal judgement delivered on 31 July 2024 declaring the entire of the Act unconstitutional meant that we would revert to the legislative position in place before the enactment of the Act. As a consequence, the Finance Act, 2022 and its accompanying amendments to the respective Acts of Parliament related to tax collection and administration would be in place.



What Does This Mean?

However, following the conservatory orders granted by the SCOK, the position under the Act shall be the status quo, pending the determination of the appeal at the SCOK, meaning, among others:

- i) **Excise Duty**: excise duty chargeable on money transfer fees, which had automatically reverted to 20% as was the position prior to the enactment of the Act, will now go back to 15% pending the outcome of the appeal at SCOK;
- ii) **VAT**: value added tax (VAT) on petroleum products, which had automatically dropped to 8% as was the position prior to the enactment of the Act, will go back 16%, pending the outcome of the appeal at the SCOK;
- iii) **PAYE**: the higher PAYE tax band of 32.5% for employees with a taxable monthly income of between KES 500,000 and KES 800,000 and 35% for employees with a taxable monthly income of more than KES 800,000 will remain in place pending the outcome of the appeal; and
- iv) **Withholding VAT** - pending the outcome of the appeal, the requirement for withholding VAT to be paid to the Kenya Revenue Authority within five days will stay in place, as opposed to paying the same on or before the 20th day following the end of the month of the payment or accrual, as was the case prior to the Act.



Further Information

At **Mukiti Advocates LLP**, we remain committed to keeping you up to date on the developments, and walking hand in hand with you to help you navigate the tax complexities.

Please do not hesitate to reach out to us if you require more information or guidance regarding the impact of the developments on your business.

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