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**DETAILED PROPOSALS AND MEMORANDUM ON THE FINANCE BILL, 2024.**

| **S/No.** | **Clause No.** | **Proposed Statute for Amendment** | **The Provision in the Finance Bill, 2024.** | **Issue** | **Impact** | **Proposed Amendment/** |
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|  | 63 | The Data Protection Act | The Bill seeks to amend section 51 of the Data Protection Act (Cap. 411C) to provide for the exemption of the processing of personal data that relates to the assessment, enforcement or collection of any tax or duty from the provisions of the Data Protection Act. | This proposed amendment will give KRA unfettered access to citizens’ personal data that extend beyond financial data.  This provision contravenes Article 24 of the Constitution of Kenya that provides for the principles of necessity and proportionality that must be adhered to in order to limit constitutionally guaranteed rights such as the right to privacy under Article 31 of the Constitution of Kenya.  Further search and seizure procedures already exist in multiple statues such as section 118 and 121 Criminal Procedure Code, Section 180 Evidence Act and section 89 KICAct | Unfettered access to devices where personal data has the potential for opening citizens to surveillance.  The lack of proper procedures such as need for search warrants issued by court could also lead to abuse of this section by KRA officials and law enforcement to target and harass citizens. |  |
|  |  | The Income Tax Act | The Bill seeks to introduce “Digital Content Monetization” into the ambit of the Income Tax Act. Thus, content offered through electronic channels and mediums referred to as digital market market place accrue an income tax.  The Bill seeks to repeal the Digital Service Tax (DST) and introduce Significant Economic Presence Tax payable by non-resident persons whose income from the provision of services is derived from or accrues in Kenya through a business carried out over a digital marketplace.  The tax rate for non-residents is 20% and 5% for residents of the income deemed to have accrued in or derived from a digital marketplace. | The proposal is vague where it provides for the rate of tax will be a percentage of what is **deemed to have accrued or been derived** from a digital marketplace. There is a need for clearer parameters to determine amount taxable.  This further income tax has potential for stifling innovation and Kenya’s digital economy. It is also exclusionary to new digital content creators and innovators whose little income will be further slashed to comply with this tax. | Stifled economic growth  Drastically lower income for content creators and platform owners.  The heavy taxation has potential of being a barrier to new entrants into the space and would also discourage innovation and investment in Kenya hence shrinkage of the Kenyan digital economy. | It is imperative to clarify the amount to be taxed.  Lower the proposed Significant Economic Presence Tax for non-residents and residents. |
|  |  | Excise Duty Act | Proposal to amend section 5 of the Excise Duty Act by introducing an excise duty on excisable services offered in Kenya by a nonresident through a digital platform; |  |  |  |
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