AN ANALYSIS OF THE IMPLICATIONS OF THE FINANCE BILL, 2024 ON THE CONSTRUCTION INDUSTRY by *QS. Mary Theresa Odhiambo, Chair QS Chapter, AAK*

As a Kenyan Quantity Surveyor reviewing the Finance Bill 2024, here are several thoughts and concerns:

1. Impact on Construction Costs

The proposed amendments to VAT and input tax deductions (Sections 3 and 6) could significantly affect construction project costs. For instance, the stipulation that only the input tax attributable to taxable supplies can be deducted in full, while those partly for other use must follow a specific formula (Section 6(6)), could complicate the accounting process and potentially reduce the amount of deductible tax. This could lead to higher overall costs for construction projects, impacting budget planning and cost management.

2. Cash Flow Management

The provision allowing refunds for excess input tax arising from zero-rated supplies or tax withheld by appointed agents (Section 5(5)) is beneficial for cash flow management. However, the requirement to lodge claims within 24 months and the retrospective application period of 12 months from July 2022 may be administratively burdensome. Professionals will need to ensure timely and accurate documentation to benefit from these refunds.

3. Tax Refunds on Bad Debts

The clause permitting tax refunds on bad debts after three years or upon legal insolvency (Section 31(1)) could provide some financial relief. However, the four-year limit for making such claims may not be sufficient in cases where debt recovery processes are prolonged. Professionals should factor in these timelines when assessing project financial health and planning for potential losses.

4. Foreign Exchange Gains and Losses

For firms involved in international projects, the treatment of foreign exchange gains and losses (Section 2(4)) will be crucial. The requirement to calculate gains or losses based on specific rates could lead to additional accounting complexities. Ensuring compliance with these rules will be essential to avoid potential tax liabilities or penalties.

5. Non-Resident Taxation

The rules governing non-resident persons and permanent establishments in Kenya (Section 4(1)-(5)) could impact foreign contractors working on local projects. The limitations on deductions for expenses incurred outside Kenya and the non-deductibility of certain payments to non-resident entities could affect the overall cost structure of projects involving international partners.

6. Application for VAT Registration

The proposed amendment requiring businesses expecting to make taxable supplies exceeding five million shillings in a 12-month period to apply for VAT registration (Section 34(1)) is a significant threshold. Professionals should ensure that smaller contractors and suppliers are aware of this requirement to avoid non-compliance issues.

Overall, the Finance Bill 2024 introduces several changes that could impact the construction industry, especially in terms of tax compliance, cost management, and financial planning. Quantity surveyors and other built environment professionals will need to stay updated with these changes and possibly seek professional tax advice to navigate the new regulations effectively.