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CERTIFIED PUBLIC ACCOUNTANTS

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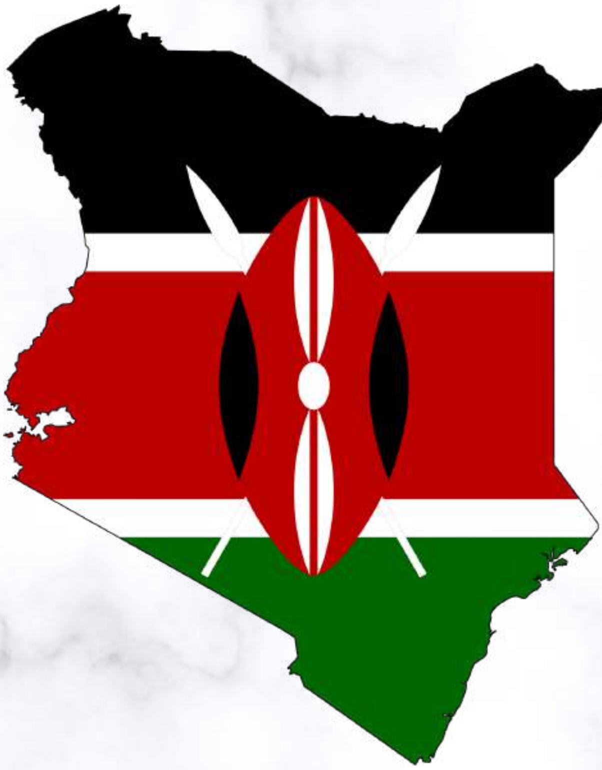
ANALYSIS OF THE FINANCE BILL, 2021



FINANCE BILL, 2021 ANALYSIS UPDATE:

Anant Bhatt LLP has prepared a brief analysis for clients and external parties on the now enacted Finance Bill, 2021 by the Government of Kenya.

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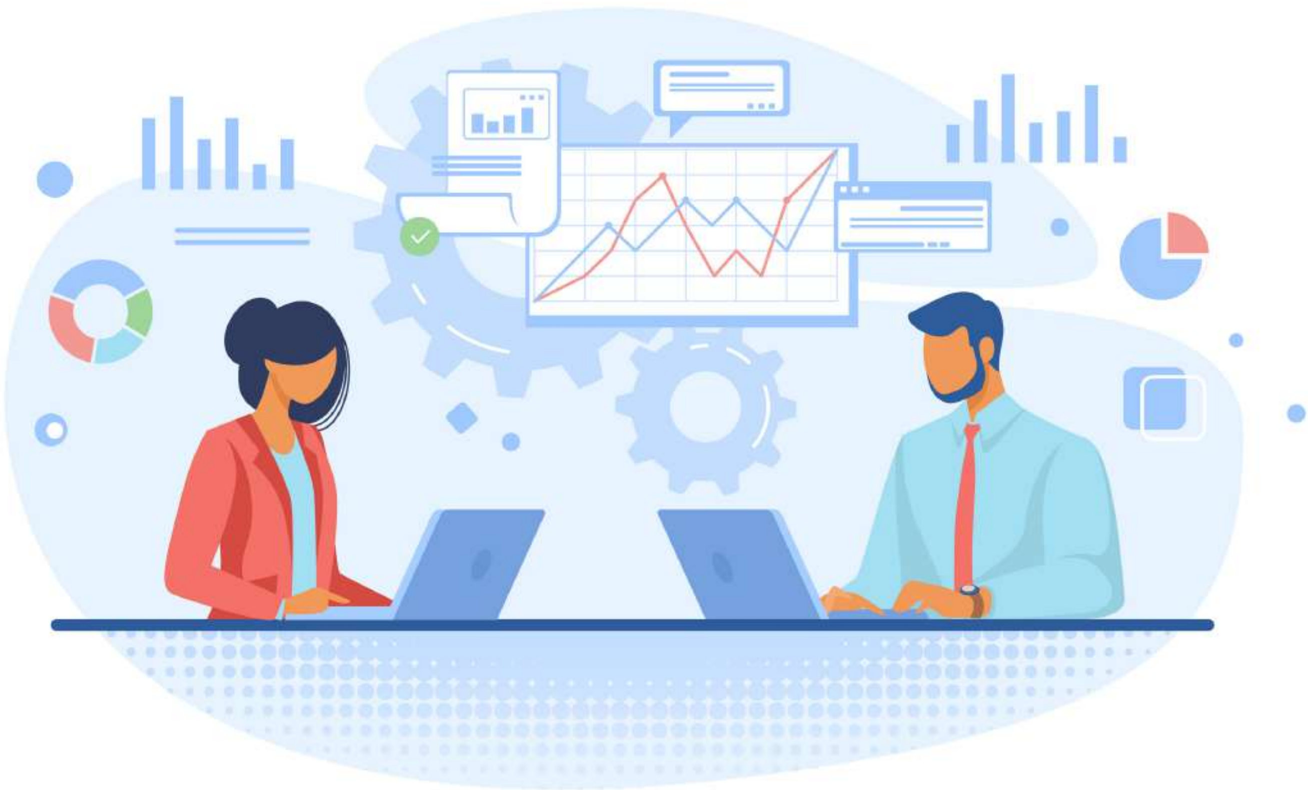


1 INTRODUCTION TO THE FINANCE BILL, 2021

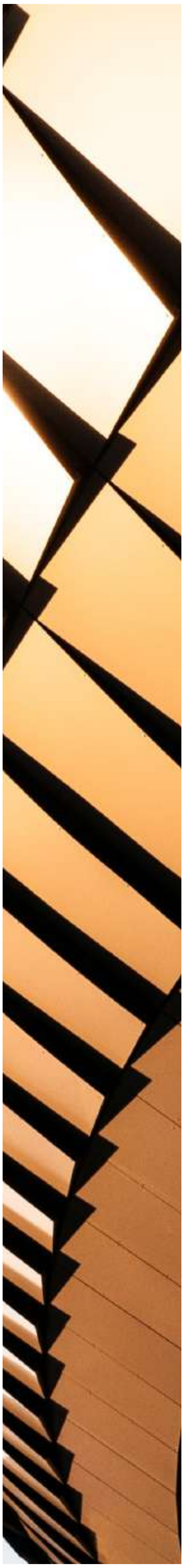
INTRODUCING THE FINANCE BILL, 2021

The proposed changes in the Finance Bill, 2021 (Bill) indicate a clear intent by the government to align its tax legislation with international best practice as it seeks to increase its tax revenues. The proposals are heavily inspired by the recent changes by the Organization for Economic Co-operation and Development (OECD) relating to tax and the prevention of profit shifting to low tax jurisdictions.

The Finance Bill, 2021 was published on 5th May 2021. The reason the Bill was introduced this early is to ensure it is assented by 30th June 2021 by H.E President Uhuru Kenyatta. This is to ensure that the changes proposed to the provisions of Income Tax Act, VAT Act, 2013, Excise Duty Act and Tax Procedures Act, 2015 become effective on 1st July 2021 to coincide with the beginning of the fiscal year.

Some stakeholders may contend that the Finance Bill, 2021's primary focus appears to be the increase in income tax revenue through: the tightening of restrictions on expense deductions for the determination of taxable income and the broadening of provisions that results to more income chargeable in Kenya.

2 INCOME TAX ACT



DEFINITION OF 'CONTROL' BROADENED

The Bill proposes to expand the definition of 'control' and instances that give rise to control. Currently, control entails ownership by one person of at least 25% of the shares or voting rights in a separate entity or another person but the Bill seeks to reduce this to 20%.

The Bill proposes that the following be included:

• Where loans advanced by a person to another person constitute at least 70% of the book value of the total assets excluding loans from financial institutions not associated with the person advancing the loan;

• Where guarantees by the person for any form of indebtedness of another person constitute at least 70% of the total indebtedness of the other person excluding guarantees from financial institutions not associated with the guarantor;

• Where the person appoints more than half of the board of directors of another person or at least one director or executive member of the governing board of that person;

• Where the manufacture or processing of goods or articles or business carried on by one person is dependent on the use of know-how, patent, copy right, trade mark, license, franchise or any other business or commercial right of a similar nature, which the other person has exclusive rights to;

• Where a person or a person designated by that person supplies at least 90% of the purchases of another person;

• Where a person purchases or designates a person to purchase at least 90% of the sales of another person; and

• Where the Commissioner is of the opinion that the relationship, dealing or practice with another person influences pricing or constitutes control.

The proposed definition is broad and deep; it will effectively impact a larger number of taxpayers. The KRA Commissioner will also have discretion to impute control in business relationships, dealings and practices. The definition is also likely to have a bearing on licensing arrangements between independent parties and dependent/exclusive distribution models.

DEFINITION OF PERMANENT ESTABLISHMENT

After many years of persuasion, the Bill proposes to repeal the current definition of the term "permanent establishment" (PE) and introduce a new definition which aligns with international best practice under the OECD and UN Models, as well as the Base Erosion and Profit Shifting (BEPS) report. The following key changes have been proposed to the current definition of PE;

- **Introduction of a service PE** – The Bill introduces the service PE concept. Provision of services including consultancy services by employees or other personnel which exceeds an aggregate of 91 days in any twelve-month period commencing or ending in the year of income will constitute a PE.

- **Exploration activities** – Installation or structures used in exploration for natural resources that continue for a period of not less than 91 days will constitute a PE.

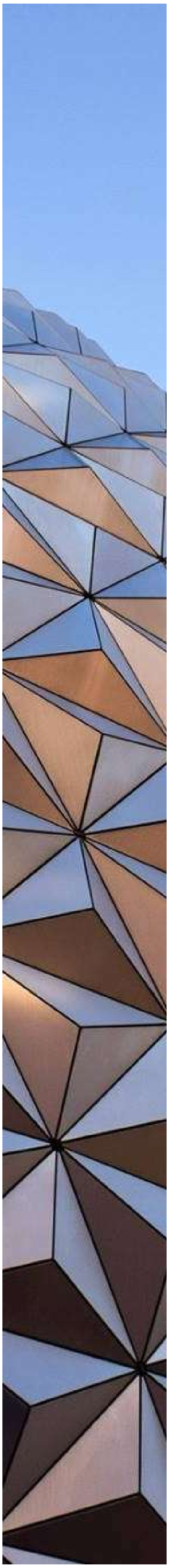
- **Threshold for split activities** – The time period for construction, assembly or installation projects (and supervisory activities connected to the same project) undertaken at different periods to be aggregated in determining the 183 days threshold.

- **Exclusions from PE** – Borrowing from the UN Model tax convention, preparatory or auxiliary activities have been defined to include;

1. Use of facilities for the sole purpose of storage, or display of goods or merchandise belonging to the foreign enterprise;

2. Maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display or processing by another enterprise;

3. Maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information for the enterprise



EXPANSION OF DIGITAL SERVICES TAX (DST)

The Bill expands the scope of DST to include any income generated by businesses over the internet or electronic networks. This is a deliberate effort to expand the tax base on taxation of the digital economy.

The Bill also proposes to exclude the following from the ambit of DST;

- Transactions by resident persons. Business carried out over the internet is taxed as business income.
- Payments made to non-residents which are subject to withholding tax
- Income received from transmission of messages by apparatus established in or outside Kenya

Persons subject to DST will be required to submit returns and pay tax due on or before the 20th day of the month following the month in which the digital services were offered.

REMOVAL OF CAPPING OF CARRY FORWARD OF TAX LOSSES

The Bill proposes to re-introduce the indefinite carry forward of tax losses. This was the position until 2010 when carry forward of tax losses was capped to five years and later in 2015 when it was capped to 10 years

This proposal will be advantageous especially to taxpayers with large capital investments that attract investment deductions that result in huge tax losses that cannot be utilized within the 10-year period.

However, this proposed amendment seems to be motivated by the introduction of minimum tax that is also applicable to persons with tax losses. The intended carry forward of tax losses indefinitely is thus an exercise in futility if minimum tax is upheld.

It should be noted that the High Court has recently suspended implementation of minimum tax pending full hearing of its constitutionality.

RESTRICTION OF INTEREST ON THIN CAPITALISATION

Currently a company is deemed to be thinly capitalized under the following circumstances;

- The company is controlled by a non-resident person alone or together with four or fewer persons.
- The company is not a bank or financial institution.
- The highest amount of all loans held by the company at any time exceeds the sum of three times the revenue reserves (including accumulated losses) and the issued and paid up share capital of all classes of shares of the company.

The Finance Bill proposes to disallow interest expenses exceeding 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) to related and non-related parties. The restriction shall only apply to;

- Interest on all loans;
- Payments that are economically equivalent to interest;
- Expenses incurred in connection with raising finance.

The proposal is aimed at discouraging allocation of group debts by multinational companies to high tax jurisdiction countries in a bid to reduce taxable profits.

The amendment however, proposes to apply interest restriction rules to entities receiving loans from related and unrelated entities. Highly geared companies therefore will no longer enjoy the full reprieve of interest as a tax deduction.

COUNTRY BY COUNTRY REPORTING (CBCR)

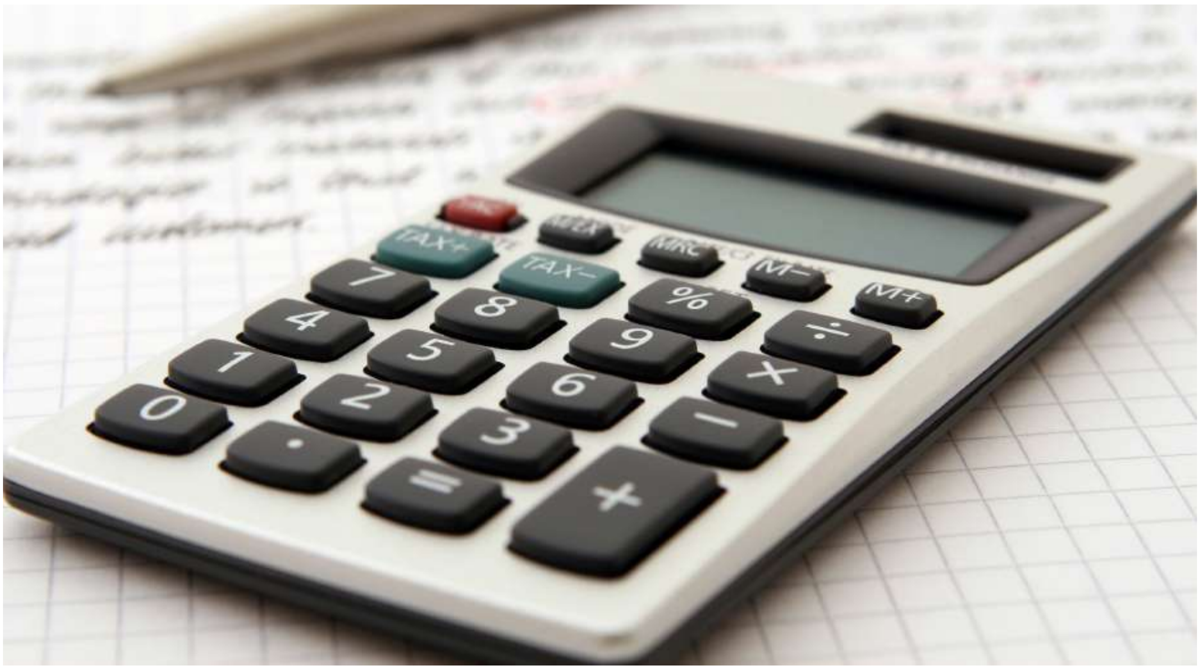
The ultimate parent entity of a MNE group based in Kenya will be required to file an annual return within twelve months after the last day of the Group's financial reporting year where the entity's gross turnover exceeds a prescribed threshold.

The information to be included in the return includes;

- The financial activities of the Group in Kenya and other jurisdictions where the Group has taxable presence (that is, gross revenue, earnings before income tax, income tax paid and accrued, stated capital and accumulated earnings);
- number of employees; and
- tangible assets excluding cash and cash equivalent

A MNE Group has been defined to mean a group that includes two or more enterprises which are resident in different jurisdictions including permanent establishments while ultimate parent entity means, "an entity that is resident in Kenya for tax purposes; is not controlled by another entity; and owns or controls a multinational enterprise group."

The objective of the proposal is to enhance information sharing across different jurisdictions so that MNEs pay their fair share of tax.



INSURANCE RELIEF ON NHIF CONTRIBUTIONS

The Bill proposes to allow individual taxpayers claim insurance relief on contributions made to the National Hospital Insurance Fund ("NHIF") in a year of income.

The proposed amendment is a welcome move as it provides relief to employees on NHIF contributions from taxation.

AMENDMENT ON LIMITATION OF BENEFITS (LOB) RULE

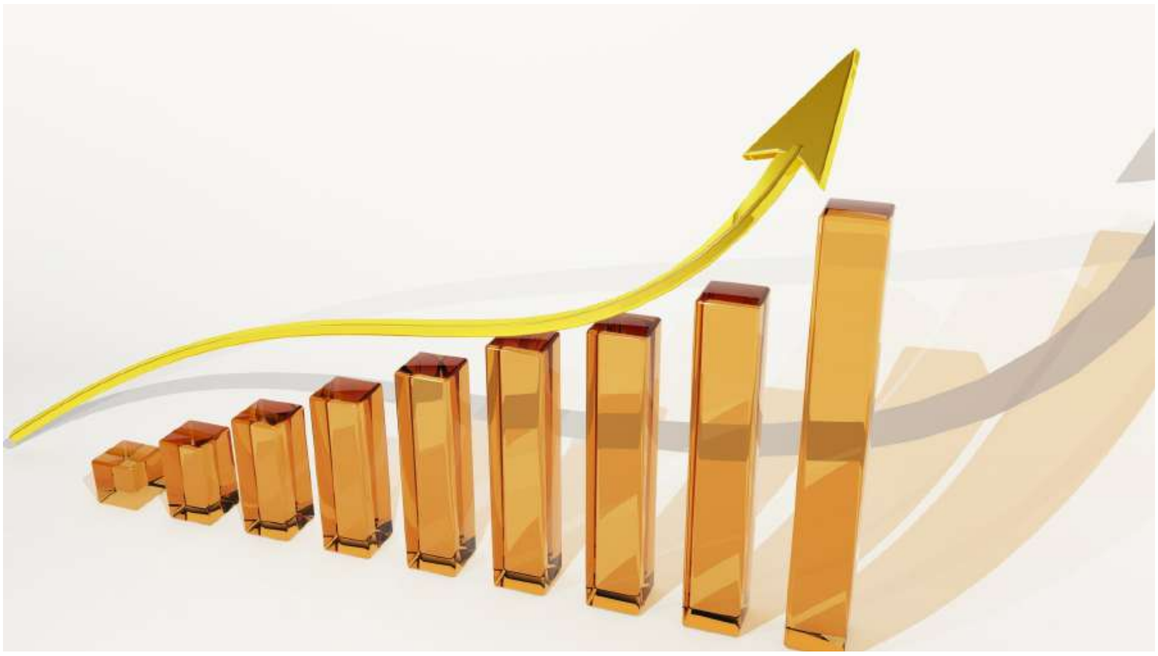
Presently, in order to enjoy treaty benefits, 50% of the underlying ownership of a company must be held by individuals. The Bill widens this restriction to persons.

Person' includes both natural and corporate person; the change effectively extends treaty benefits limitations to companies, partnerships, trusts, Governments or such other bodies.

INFRASTRUCTURE BOND

The Bill also proposes to define an infrastructure bond to mean a bond issued by the Government for the financing of a strategic public infrastructure facility.

This makes it clear for persons who want to invest in infrastructure bonds due to the associated income tax exemptions.



AMENDMENT TO INVESTMENT ALLOWANCES DEDUCTION METHOD

ITEM	CURRENT RATE	PROPOSED RATE
Hotel buildings, buildings used for manufacture, hospital buildings and Petroleum or gas storage facilities	50% in the first year and 25% on the residual value per year on reducing balance basis	50% in the first year and 25% on the residual value per year on equal instalments
Commercial and educational buildings including student hostels	10% per year on reducing balance basis	10% per year on equal instalments
Machinery used for manufacture, hospital equipment and ships and air crafts	50% in the first year and 25% on the residual value per year on reducing balance basis	50% in the first year and 25% on the residual value per year on equal instalments
Motor vehicles and heavy earth moving equipment	25% per year on reducing balance basis	25% per year on equal instalments
Computer and peripheral, computer hardware, computer software, calculators, copiers and duplicating machines	25% per year on reducing balance basis	25% per year on equal instalments

ITEM	CURRENT RATE	PROPOSED RATE
Furniture and fittings and telecommunication equipment	10% per year on reducing balance basis	10% per year on equal instalments
Filming equipment	25% per year on reducing balance basis	25% per year on equal instalments
Machinery used to undertake operations under prospecting right and machinery used to undertake exploration operations under a mining right	50% in the first year and 25% on the residual value per year on reducing balance basis	50% in the first year and 25% on the residual value per year on equal instalments
Other machinery	10% per year on reducing balance basis	10% per year on equal instalments
Fibre optic cable	10% per year on reducing balance basis	10% per year on equal instalments
Farm works	50% in the first year and 25% on the residual value per year on reducing balance basis	50% in the first year and 25% on the residual value per year on equal instalments

The proposed change of capital deduction criteria from reducing balance to equal instalments will see taxpayers equally spread the capital deductions over the life of the asset depending on the applicable investment allowance rate.

The Bill proposes to:

- remove the narrow requirement for a producer to supply electricity through the national grid in order to qualify as manufacturing; and

- defines civil works in relation to manufacturing activities to include roads and parking areas, railway lines and related structures, water, industrial effluent and sewerage works, communications and electrical posts and pylons and other electrical supply works and security and fencing.

- While these proposals are laudable, it is unfortunate that the Bill did not define farmworks as expected.

TAXATION OF EXTRACTIVE SECTOR

The Bill seeks to reduce the claim of tax depreciation for machinery used to undertake prospecting/exploration operations from 100% to 50% in the first year of use, with the balance being claimed in the subsequent 2 years on straight line basis.

Further the Bill seeks to:

- Increase the tax rate on service fees paid to a non-resident subcontractor by a contractor or licensee from 5.625% to 10%

- Reduce the tax rate on management, training or professional fees from 12.5% to 10%.

- Align the deductibility of interest expense to 30% of EBITDA

TAX PROCEDURES ACT

INCREASED SCOPE OF TPA

The Miscellaneous Fees and Levies Act, 2016 has been brought under the ambit of the Tax Procedures Act, 2015 (TPA). Administrative and procedural matters will thus be governed by the provisions of the TPA.

INTERNATIONAL TAX AGREEMENTS

The Bill proposes to recognise multilateral agreements and treaties entered into or on behalf of the Government of Kenya relating to international tax, compliance and prevention of evasion of tax or exchange of information on tax matters. Such agreements will have an effect as stipulated therein.

COMMON REPORTING STANDARDS

The Government has proposed to enshrine within its legislation the following provisions so as to implement the Common Reporting Standard (CRS) regime;

- Common reporting standard means the reporting and due diligence standard for the automatic exchange of financial account information;
- Financial institution (FI) means a custodial institution, a depository institution, an investment entity or a specified insurance company;
- Kenyan FI means any FI that is resident in Kenya but excluding a branch of the FI that is located outside of Kenya. Additionally, a Kenyan FI includes any branch of a FI that is non-resident in Kenya, if the branch is located in Kenya.

A reporting FI will be required to;

- Comply with due diligence procedures and record keeping requirements set out in the CRS Regulations;
- Identify reportable accounts and file with the Commissioner an information return on accounts held, managed or administered by that reporting FI; and
- File a nil return if no reportable account is held, managed or administered by that reporting FI.

AMENDMENT TO STATUTE OF LIMITATION

The Bill proposes to extend the time period that a taxpayer is required to maintain their records from 5 to 7 years. The time limit within which a taxpayer can amend a tax return is also to be increased from 5 to 7 years.

AMENDMENTS ON TAXATION OF THE DIGITAL ECONOMY

The Bill proposes to;

- Allow a non-resident person who is carrying on business through a digital marketplace to maintain their records in a convertible foreign currency upon approval by the Commissioner. This excludes a non-resident person who makes payments and files returns through a resident tax representative or those with a branch in Kenya.

- Enhance the collection of tax on income generated from services provided over the internet or through an electronic network including through a digital marketplace by empowering the Commissioner to seek intervention from any relevant authority to collect such taxes.

- To include selling of goods or services over a digital marketplace in the list of transactions for which a PIN will be required.

EXEMPTION FROM VAT WITHHOLDING SCRAPPED

The Bill proposes to scrap the powers of the Commissioner currently exercises in exempting suppliers from the withholding VAT provisions. There is no clarity on what will happen to already approved exemptions, which in the past were granted for a period of up to 24 months. Businesses that are perpetually in refund position will be pushed into further refunds.

OTHER PROPOSED AMENDMENTS

The Bill seeks to;

Introduce a penalty in relation to offences under the CRS as follows;

- KES 100k or imprisonment for a term not exceeding 3 years or both for each false statement or omission;

- KES 1m for a financial institution that fails to file an information or ‘Nil’ return;

- General penalty of KES 20k and subsequent KES 20k per day for noncompliance for a period not exceeding 60 days.

3 VALUE ADDED TAX (VAT) IMPACTS

EXPANSION OF SCOPE OF TAXATION OF DIGITAL MARKETPLACE SUPPLIES

The bill proposes to amend Section 5 of the VAT Act and bring to charge supplies made over the internet or an electronic network or through a digital marketplace.

With the amendment, any suppliers who sell goods/ services via websites, social medial platforms or any other electronic device/ platform will be required to account for VAT.

EXPANSION OF RESTRICTION ON DEDUCTIBILITY OF INPUT TAX

The bill proposes that in addition to acquisition, costs incurred with respect to leasing or hiring of passenger cars, minibuses and costs associated in repairs shall not be claimable as a credit for VAT purposes

The proposed amendment expands the list of costs that do not qualify for input VAT.

REGISTRATION FOR VAT BY GROUP COMPANIES

The Bill proposes to delete the current provision allowing single VAT registration by a group of companies. The regulations required to operationalize this provision have never been issued hence the lack of implementation.

Group VAT registration has worked in other jurisdictions (e.g. the UK). Group registrations would also have been efficient for group companies providing digital services and earning related revenues from Kenya.

ENACTMENT OF VAT REGULATIONS

The Bill proposes to remove the requirement to table VAT Regulations made by the Cabinet Secretary (CS) before the National Assembly for approval before they take effect.

This is contrary to the principle of separation of powers with the CS seemingly having legislative powers.

AMENDMENT OF STATUS OF VARIOUS SUPPLIES

CHANGES	CURRENT RATE	PROPOSED RATE
Disposable plastic syringes	Exempt	16%
Other syringes with or without needles	Exempt	16%
Plain polythene film/PE of tariff number 39.20.10.10	Exempt	16%
12-16 gsm spunbound piyropononwoven coverstock/15gsm spunbound PP non-woven SSMMS hydrophobic leg cuffs of tariff number 56.03.1190.	Exempt	16%
PE white 25-40gsm/release paper of tariff number 48.10,99.00	Exempt	16%
Airlid paper without super absorbent polymer 180gsm/67 of tariff number 48.03.00.0	Exempt	16%
Airlid paper without super absorbent polymer 80gsm/67 of tariff number 48.03.00.0	Exempt	16%

CHANGES	CURRENT RATE	PROPOSED RATE
Protein concentrates and textured protein substances	16%	Exempt
Food preparations specially prepared for infants	16%	Exempt
Other-Food preparations not elsewhere specified or included	16%	Exempt
Immunological products, unmixed, not put up in measured doses or in form of packings for retail sale.	16%	Exempt
Vitamin C and its derivatives	16%	Exempt
Malaria diagnostic test kits	16%	Exempt
Immunological products, mixed, not put up in measured doses or in form of packings for retail sale.	16%	Exempt
Immunological products, put up in measured doses or in forms or packings for retail sale	16%	Exempt

CHANGES	CURRENT RATE	PROPOSED RATE
Insulin	16%	Exempt
Other antisera, other blood fractions and immunological products whether or not modified or obtained by means of biotechnological processes	16%	Exempt
Other medicaments, containing, alkaloids or derivatives containing norephedrine or its salts	16%	Exempt
Other, containing antimalarial active principles described in Subheading Note 2 to this Chapter	16%	Exempt
Other milk in powder granules or other solid forms of a fat content by weight, exceeding 1.5%	16%	Exempt
Food supplements	16%	Exempt
Other artificial parts of the body; pacemakers for stimulating heart muscles, excluding parts and accessories	16%	Exempt
Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hydrometers and psychrometers, recording or not	16%	Exempt

CHANGES	CURRENT RATE	PROPOSED RATE
Other milk	16%	Exempt
Orthopaedic or fracture appliances	16%	Exempt
Blood giving set and infusion sets	16%	Exempt
Taxable goods excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration license in accordance with the Energy Act,2019	16%	Exempt
Specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers and deep cycle batteries that use solar power.	16%	Exempt
Taxable good supplied to persons that had an agreement or contract with the Government prior to 25 April 2020 and the agreement or contract provided for exemption from Value Added Tax	16%	Exempt
Medical ventilators and the inputs for the manufacture of medical ventilators upon recommendation by the cabinet Secretary for Health	16%	Exempt
Physiotherapy accessories, treadmills for cardiology therapy and treatment for use by licensed hospitals upon approval by the cabinet secretary for Health	16%	Exempt

CHANGES	CURRENT RATE	PROPOSED RATE
Electro diagnostic apparatus upon approval by the Cabinet Secretary for Health	16%	Exempt
Medicaments of tariff numbers 3003.41. 00,3003.42.00,3003.43.00,300.49.00, 3003.60.00	16%	Exempt
Diagnostic or laboratory reagents of tariff number 3822.00.00 on a backing prepared diagnostic or laboratory reagents	16%	Exempt
Other instruments and appliances used in dental sciences, dental drill engines, whether or not combined on a single base with other dental equipment, upon approval by the Cabinet Secretary for Health	16%	Exempt
Ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus upon approval by the Cabinet Secretary for Health	16%	Exempt
Other instruments and appliances, including surgical blades used in dental sciences upon approval by the Cabinet Secretary for Health	16%	Exempt
Other breathing appliances and masks, excluding protective masks having neither mechanical parts nor replaceable filters	16%	Exempt
Fetal Doppler-Pocket (Wgd-002) Pc and pulse oximeter-finger held (Gima brand) Pc upon approval by the Cabinet Secretary responsible for Health	16%	Exempt

EXTENSION OF SPECIAL VAT EXEMPTIONS

The Bill proposes that any person who had supplied taxable goods to persons that had an agreement or contract with the Government prior to 25th April 2020, which provided for VAT exemption will continue enjoying the exemptions for the unexpired period of the agreement or contract.

PROPOSED VAT EXEMPTION FOR TRANSACTIONS UNDER REAL ESTATE INVESTMENT TRUSTS

The Bill proposes to exempt from VAT transfer of assets and other transactions related to the transfer of assets into real estate investment trusts and asset-backed securities. Currently, this is standard rated. This aims to spur growth in the Real Estate sector.

HARMONISATION WITH THE COMMON EXTERNAL TARIFF (CET)

The Bill has proposed several deletions from and inclusions in the First schedule which are meant to align the Harmonised System Codes in the Value Added Tax Act, 2013 to the EAC Common External Tariff, 2017. However, the VAT status of these products remains exempt

ITEMS SUBJECT TO VAT W.E.F 1 JULY 2021 AS PER FINANCE ACT, 2020

CHANGES	CURRENT RATE	PROPOSED RATE
8802.11.00 Helicopters of an unladen weight not exceeding 2,000 kg	Exempt	16%
8802.12.00 Helicopters of an unladen weight exceeding 2,000kg.	Exempt	16%
8802.20.00 Aeroplanes and other aircraft, of unladen weight not exceeding 2000kgs	Exempt	16%
Other aircraft (for example, helicopters, aeroplanes); spacecraft (including satellites) and suborbital and spacecraft launch vehicles-	Exempt	16%
8803.30.00 Other parts of aeroplanes or helicopters	Exempt	16%
8805.10.00 Aircraft launching gear and parts thereof; deck arrestor or similar gear and parts thereof.	Exempt	16%
8805.21.00 Air combat simulators and parts thereof.	Exempt	16%
8805.10.00 Aircraft launching gear and parts thereof; deck arrestor or similar gear and parts thereof.	Exempt	16%

4 EXCISE DUTY IMPACTS

AMENDMENTS TO KEY DEFINITIONS

The Bill seeks to amend Section 2 of Excise Duty Act, 2015 to introduce the following new definitions;

- Compound to mean communicate any flavour to, or to mix any ingredient or material with, spirits, but not so as to denature the spirits;
- Possession to mean having, owning or controlling any excisable goods
- other fees by deleting the words "..fees or commissions earned in respect of a loan..." from the definition. Other fees will be defined to include any fees, charges or commissions charged by financial institutions relating to their licensed activities, but does not include interest on loan or return on loan or any share of profit.

RELIEF FROM EXCISE DUTY PAID

The Bill proposes to allow licensed persons who have paid tax on purchased internet data in bulk for resale, to offset it against the excise duty payable on internet data services supplied to the final consumer.

This proposal is welcome and timely especially for taxpayers in the internet data business. "Input" excise duty will no longer be a cost as it will be offset against "output" excise duty charged/payable.

LOCAL SUGAR CONFECTIONERY AND CHOCOLATE PRODUCTS

The Bill proposes to expand the application of excise duty to include local sugar confectionery and chocolate products as follows:

- Sugar confectionery of tariff 17.04 at the rate of KShs. 20 per Kg; and
- White chocolate in blocs, slabs or bars of tariff 1806.31.00, 1806.32.00, 1806.90.00 at KShs. 200 per Kg.

CHANGE OF EXCISE DUTY BASIS ON MOTOR CYCLES

Currently, excise duty on motor cycles is KES 11,608.23 per unit. The bill proposes to charge excise duty on the products at “15%”

The amendment is in line with the equity principle of taxation of ensuring an equitable distribution of the tax burden for the tax payers. Therefore, the tax burden shall depend on the value of the motorcycle unlike the previous common duty for all taxpayers.

JEWELLERY OF TARIFF 7113 AND IMPORTED JEWELLERY 7117

Currently, there is no excise duty on articles of jewellery and imitation of jewellery. The proposal is to introduce a 10% excise duty.

Introduction of excise duty on jewelry is consistent with the trend where the government has deviated from the perception of excise duty tax as a “sin tax” by now introducing the tax on other products as a way of expanding the tax base.

PRODUCTS CONTAINING NICOTINE OR NICOTINE SUBSTITUTES

Currently, there is no excise duty on products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application . The proposal is to introduce a 5000ksh/kg excise duty.

The move is seen as way of broadening the taxes base to net in more revenue from taxes.

EXCISE DUTY ON BETTING

Currently, there is no excise duty on on betting. The proposal is to introduce a 20% Excise duty on betting on the amount wagered or staked. excise duty.

The excise duty was introduced by the Finance Act 2019 but the same was removed by the Finance Act 2020. The objective of this amendment is to expand the revenue collection on excise duty.

However, the persistent introduction of taxes on the betting industry as a way of discouraging investment in the sector is punitive for the stakeholders.

5 IMPACT ON MISCELLANEOUS FEES AND LEVIES ACT

APPLICATION OF TAX PROCEDURES ACT, 2015 (TPA)

The Bill proposes to amend Section 9 of the Act to bring the following under the ambit of Section 47 of the TPA;

- Application for refunds, ascertainment and repayment of fees and levies overpaid or paid in error; and
- The determination by the Commissioner of penalties and interests on fees that remain unpaid.

With this amendment, refund of import declaration fee, export duty and railway development levy will be conducted as per the TPA provisions. Similarly, calculation of penalties and interest accruing on unpaid amounts shall be as per the TPA provisions.

EXEMPTIONS FROM IMPORT DECLARATION FES AND RAILWAY DEVELOPMENT LEVY

The Bill proposes to exempt importation of goods which the Cabinet Secretary determines to be of public interest or which promote investment (and whose value is not less than KES 5b) from Import Declaration Fees (IDF) and Railway Development Levy (RDL).

This proposal is a welcome move by the Government to encourage investment in Kenya. We however note that KES 5b threshold is not realistic. Prior to 2020, there was a similar exemption from IDF with a much smaller threshold of KES 200m that attracted more potential investors.

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