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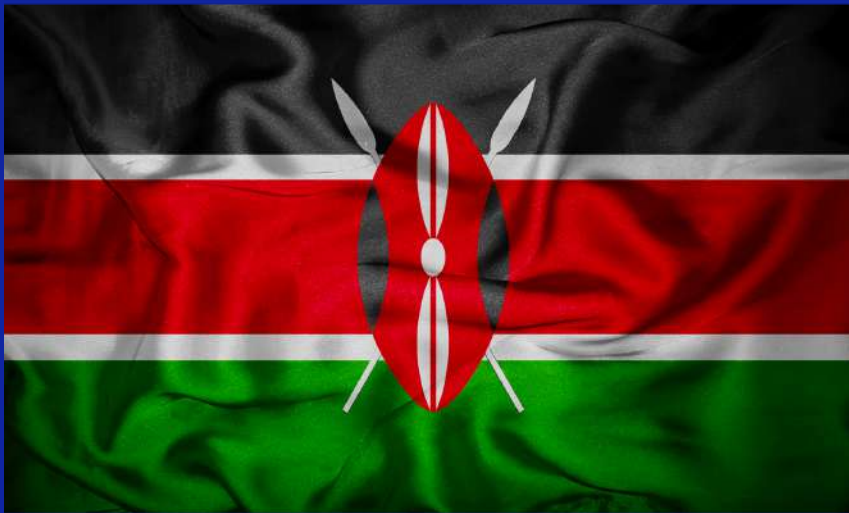
CERTIFIED PUBLIC ACCOUNTANTS

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KENYA NATIONAL BUDGET OVERVIEW 2021/2022



KENYAN NATIONAL BUDGET

Anant Bhatt LLP has prepared a brief analysis for clients and external parties on the recently published Kenyan National Budget, by the Government of Kenya.

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1 INTRODUCTION



Kenya's FY 2021/22 budget is being presented at a time when the global economy is emerging from recession due to the pandemic. The budget aims at addressing concerns arising from the difficulties in accessing Covid 19 vaccines, high cost of living, unemployment, stimulating private sector growth and the rising public debt.

The Government is keen to reduce the budget deficit to GDP ratio from 8.7% currently to 3.6% by FY 2024/2025. Economic growth of 6.6% in FY 2021/22 from 0.6% in FY 2020/2021 is also being projected.

The policy aims at mobilizing revenues through tax reforms in tax policy and administration. The projected performance is premised on broadening of the tax base and tax reforms through introduction of digital tax and voluntary tax disclosure programme.

Therefore, the 2021/22 budget targets revenue collection including Appropriations-in-Aid (AIA) of KES 2.04 trillion, equivalent to 16.4% of GDP, a growth from the estimated revenues of KES 1.89 trillion, equivalent to 16.8% of GDP in the financial year 2020/21. Of this, ordinary revenues in the financial year 2021/22 are projected at KES 1.78 trillion, equivalent to 14.3% of GDP

This performance may prove challenging to achieve given GDP ratio has been on a steady decline for the last few years. The government is also projecting to progressively reduce expenditure as a share of GDP from 25.6% in FY 2020/21 to 24.3% in FY 2021/2022.

The recurrent expenditures in the financial year FY 2021/22 will amount to KES 2.0 trillion or 16.2% of GDP. Due to shortfall in revenues, the government will once again tap into the credit markets to finance the budget deficit

The government's efforts to reduce inefficiencies and wastage are applauded. However, more scrutiny should be applied to ministerial, department and agency budgets, and a clear fiscal policy that aims to reduce the growing budget deficit should be pursued.

2 KENYAN ECONOMY

INTEREST RATES

Kenya, having low and steady interest rates and a competitive currency rate that encourages exports, the economy has continued to show macroeconomic stability. Further, following the implementation of monetary policies to weather the economic and financial crisis caused by the global health epidemic, the central bank rate has stayed steady at 7%

Interest rates on government securities have also fallen as a result of better monetary policy coordination and more liquidity in the government security market.

EMPLOYMENT RATES

Unemployment in the third quarter of 2020 was at a high of 7.2%, up from 5.3% in the same quarter of 2019, showing that it has not yet fully recovered to pre-pandemic levels. This was however expected as the road to recovery has just begun, with the vaccination drive still in its early stages.

The employment rate predicts a significant slowdown in private sector consumption, which impacts on growth and human capital development.

EXCHANGE RATES

In January 2021, the Kenya Shilling to USD exchange rate was KShs 109.8, up from KShs 101.1 in January 2020. Following global financial conditions caused by the Covid-19 pandemic, the Kenya Shilling exchange rate depreciated against international currencies, but less so than other African currencies.

During the pandemic, foreign remittances continued to perform extraordinarily well, which contributed to its relative stability in comparison to its African counterparts.

The country received an estimate of KShs 299.3 billion in April 2021, up from KShs 208.2 billion in April 2020.

In the midst of uncertainty, foreign direct investments have been low, with concerns expressed about the chances of economic recovery and governmental debt levels, both of which have stifled exchange rate reserves



PUBLIC DEBT

Public debt has grown by 6% compared to the period 2019/2020 with an estimated value of KShs 7.7 trillion by June 2021 and is expected to grow even higher, as per CBK projections.

The effects of the pandemic on the economy caused a reduction in paying public debt from KShs 850 billion in 2019 to KShs 651 billion in 2020.

In the second half of 2020/2021, development spending is expected to fall short of expectations as a result of the adverse effects of the pandemic which have depressed business operations. As a result of the global financial crisis, disbursements to foreign financed programs decreased by KShs 48.8 billion.

EASE OF DOING BUSINESS

Kenya is considered an investment hub in the East Africa region and the ease of doing business in Kenya provides an objective of ensuring that regulations and requirements are fair both to the investors and the Government.

The Government continues to adopt appropriate fiscal and monetary policies, which have resulted to macroeconomic stability. In line with this, interest rates, inflation rates and foreign exchange rates have remained relatively stable.



3 BUDGET OVERVIEW - SECTOR BY SECTOR ANALYSIS

FINANCIAL SERVICES

PROTECTING BORROWERS

The Cabinet Secretary noted that the government had, through the Central Bank of Kenya (Amendment) Bill 2021, proposed to license digital credit service providers.

Currently, there is no legal framework governing the digital borrowing platforms.

ENHANCING ACCESS TO AFFORDABLE CREDIT AND HOUSING

This year, the government has committed an additional KES 2 billion, in addition to the KES 3 billion seed capital provided last year with the aim of ultimately raising the capital in the scheme to KES 10 billion.

The scheme is aimed at making lending to micro, small & medium enterprises (MSMEs) less risky and therefore encouraging lending to the subsector.

CAPITAL MARKETS

The Cabinet Secretary proposed to amend the Central Depositories Act to allow opening of investment accounts by persons investing on behalf of others. This is expected to increase inclusivity by allowing collective investments by groups.

An amendment to the Capital Markets Act has been proposed to introduce a time limit of 90 days to the tribunal for hearing and determining appeals.



AMENDMENTS TO THE INSURANCE ACT

The Cabinet Secretary proposed amendments to the Insurance Act:

- to provide for the regulation of foreign insurance brokers. This will safeguard the interests of insurers and policyholders, and
- to align the maximum permitted management expenditure with the classification of long-term insurance business lines that had been implemented in 2009. The amendment is expected to improve compliance and reduce the tax burden on the long term insurance business

RETIREMENT BENEFITS SERVICES

The Cabinet Secretary has proposed the following measures aimed at improving the provision of retirement benefits in the country:

- the National Treasury will implement a pensions information management system to help in clearing the pension liability backlog;
- development of a National Retirement Benefits policy to harmonize all pensions laws. The policy will cover both the formal and informal sector and will seek to protect beneficiaries and pension holders; and
- roll out a national informal sector pension scheme in the next financial year. The scheme will target 15 million informal sector workers.



INFRASTRUCTURE

RAIL, ROAD, AIRPORTS AND AIRSTRIPS

The government has singled out rail as a key enabler, in order to boost regional connectivity. It will benefit from the following allocations:

- KES 27.2 billion for phase II of the SGR
- KES 2 billion for the Naivasha ICD
- KES 1.3 billion for the railways metro line
- KES 1.1 billion for the Nairobi-Nanyuki meter gauge rail; and
- KES 700 million for rehabilitation of the Nakuru-Kisumu meter gauge rail.

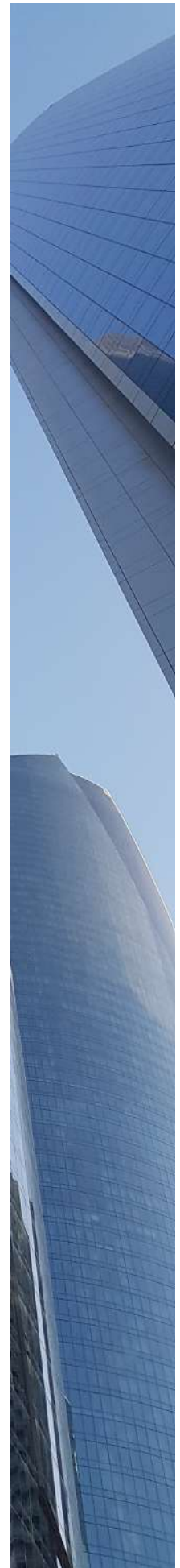
The activity generated from the investment should help reinvigorate the economy following the depressed growth during the COVID-19 pandemic.

ENERGY: POWER TRANSMISSION AND DISTRIBUTION

KES 50.1 is billion directed towards constructing additional transmission and distribution lines and establishing new substations to extend power supply in rural areas.

On the generation side, KES 11.3 billion has been allocated for the development of geothermal energy. This allocation is broadly in line with Kenya's long term energy sector plan which entails running geothermal and hydro technologies

The end goal for the allocations into the energy sector is to attain universal access while supporting ongoing projects and programs aimed at reducing system losses and improving system reliability.





PORTS INFRASTRUCTURE AND ECONOMIC ZONES

Sea ports, being the key entry gateway into the country and the region, remain an area of infrastructure investment focus for the government. With the recent launch of the first berth at the Lamu Port, a number of investment initiatives seek to enhance the utilisation of the Lamu port, these are:

- KES 3.0 billion Free Disease Holding Ground for livestock exports through the port; and
- KES 1.0 billion for construction of a Fish Processing Plant in Lamu.

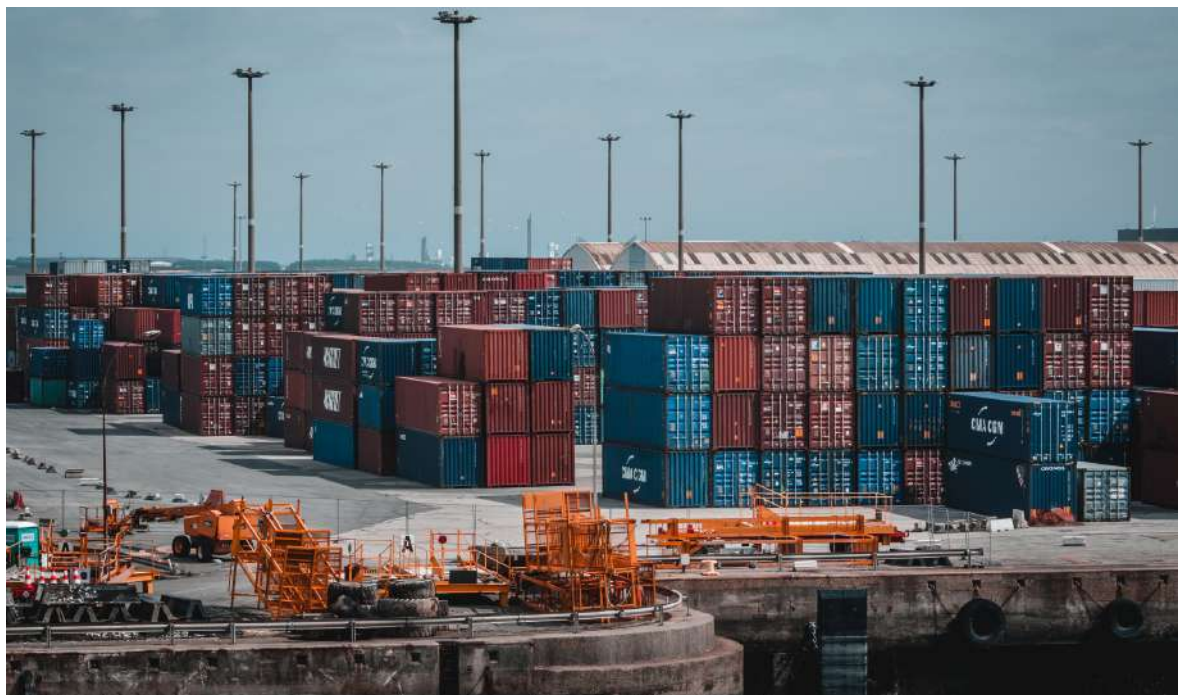
Additionally, the government has also proposed allocations of KES 7.5 billion to the Mombasa Port Development Project.

SPECIAL ECONOMIC ZONES AND INDUSTRIAL PARKS

The government, as part of 'The Big Four agenda' also plans to facilitate industrial investments in the country through the use of special economic zones in Dongo Kundu (KES 8.5 billion), Naivasha (KES 350 million), and Kisumu.

These investments may address the relatively lower levels of value addition in the country. However, the investments will need to be coupled with added measures to address investor concerns

This will help to achieve the desired increase in economic contribution by the manufacturing sector and broader economic development.



INFRASTRUCTURE

CONTINUED INVESTMENT INTO SPECIAL ECONOMIC ZONES

The government is banking on special economic zones to spur growth of industries in the counties to help the manufacturing sector recover from the devastating effects of Covid-19.

KES 8.5 billion has been allocated for Dongo Kundu Special Economic Zone, a significant increase from the 3.0 billion allocated in last year's budget. Other allocations include:

- KES 350 million for the development of the Special Economic Zone Textile Park in Naivasha; and
- KES 90 million for the Freeport and Industrial Park Special Economic Zone in Mombasa.

LOCAL MANUFACTURING

The Cabinet Secretary indicated that there has been an increase in capacity of the metal and allied subsector. However, the local manufacturers in this sub-sector continue to face stiff competition from cheaper imports.

EAC partner states have agreed to extend the duty-free importation window for raw materials and inputs for production of masks, sanitisers, ventilators and personal protective equipment for a further one year to help the ongoing fight against the Covid-19 pandemic.



TOURISM AND HOSPITALITY SECTOR

TOURISM RECOVERY

In order to support the tourism the government has proposed to allocate KES 1.7 billion for the Tourism Fund and KES 643.0 million for Tourism Promotion Fund.

The Cabinet Secretary acknowledged that the COVID-19 pandemic and the subsequent containment measures have greatly affected the tourism sector. However, these figures are a significant decrease from the KES 9.3 billion allocated to tourism recovery in the 2020/21 national budget.

TOURISM INDUSTRY

According to KNBS, Kenya received 439,487 tourists in 2020 through Jomo Kenyatta and Moi International Airports, a significant decline from 1.54 million tourists received in 2019.

Restrictions on travel to combat COVID-19 have reduced airline travel and accelerated cancellations of hotel reservations. The result has been reduced foreign exchange inflows and severely impacted service sector related employment across the country.



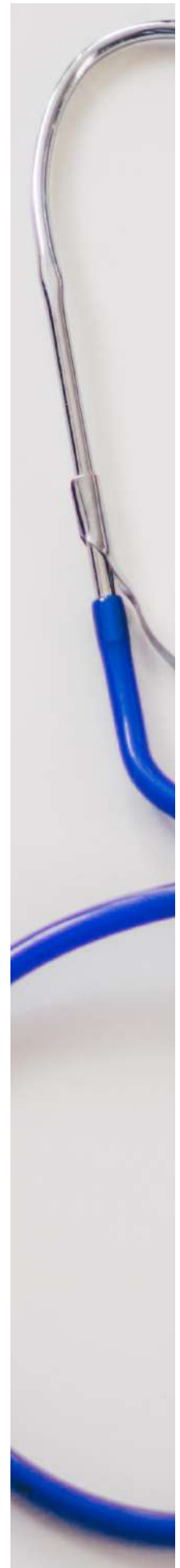
HEALTHCARE

HIGHLIGHTS OF THE HEALTH SECTOR BUDGET

- Implementation of the big four agenda remains a priority in this budget with KES 121.1B being allocated to the health sector.
- To bolster the fight against COVID19, the government has introduced some tax relief measures on various pharmaceuticals and medical equipment.
- An amount of KES 14.3B has been allocated for the purchase of COVID19 vaccines.
- Universal Health Care (UHC) still remains relevant with KES 47.7B allocated.
- To enhance the capacity of the healthcare system, an amount of KES 1.2B has been allocated for the recruitment of 5,000 healthcare workers.

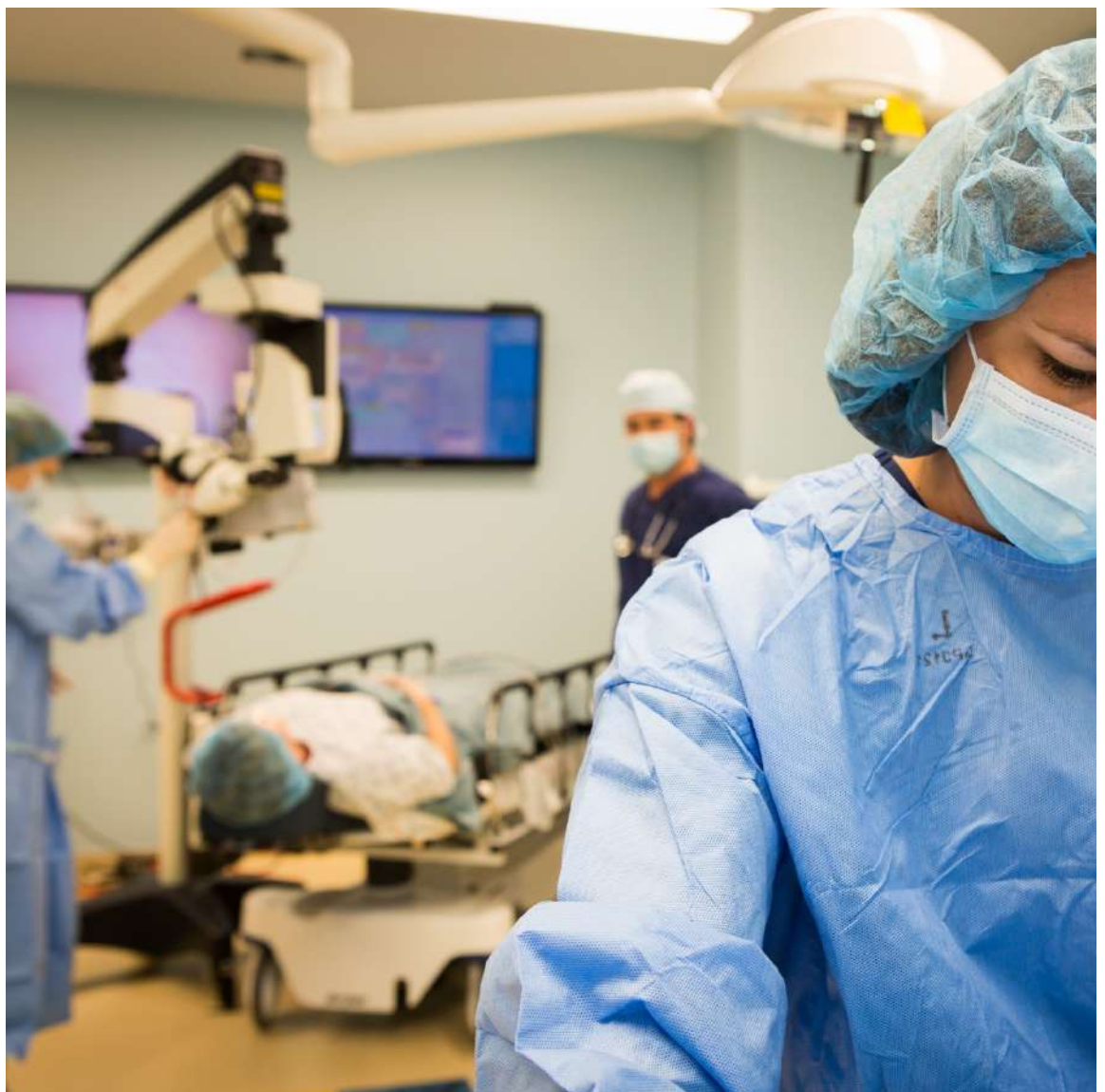
COVID- 19

- Since 13 March 2020 when the first case was confirmed in Kenya, a total of 173,000 COVID-19 confirmed cases have been detected as of 9 June 2021. All counties are affected (Nairobi, Kiambu and Mombasa are the top 3 counties).
- So far, over one million Kenyans have received the first dose of the vaccine. There remain challenges to the vaccine roll-out. To address this, KES 14.3B has been allocated for COVID19 vaccines.
- As a preventive measure, KES 8.7B has been allocated to mitigate against emergence of new COVID-19 variants



OTHER HEALTHCARE ALOCATIONS

- An allocation of KES 5.8B to support and manage fight against HIV/AIDS, Malaria and tuberculosis in the country
- To enhance vaccines and immunizations programme, we have set aside KES 3.9B.
- KES 7.2B for the Managed Equipment Services (MES) as well as KES 1.8B to provide medical cover for the elderly and severely disabled persons in our society.
- To enhance early diagnosis and management options for cancer and reduce the burden of treatment among Kenyans, an allocation of KES 800M for procurement of Cyberknife Radiotherapy Equipment and the establishment of two cancer centres in Meru and Kakamega



AGRICULTURE

AGRICULTURE ALLOCATIONS

The FY 2021/22 agricultural sector allocation is KES 60 billion compared to KES 52.8 billion in FY 2020/21, representing a 5% increase. The government. The areas of focus for the government are as follows:

- allocation to the livestock sector targeting smallholder farming and pastoral communities in Kenya, while enhancing value chains;
- blue economy resources aimed at increasing fish production by refurbishing Liwatoni Fishing complex and setting up a new fish processing plant in Lamu. This will promote exports and increase incomes for the local fishermen;
- cash crops allocation proposed for the revitalization of the coffee industry, modernization of cooperative cotton ginneries as subsidy and extension support; and
- continued funding of the existing projects including an allocation for the emergency locust response and irrigation projects



TECHNOLOGY

ECONOMY

The government remains focused on developing a digital economy, viewing it as a key contributor to the socioeconomic development of the country. In his budget remarks the Cabinet Secretary indicated that the government will upscale investment in ICT and digital infrastructure in order to facilitate ecommerce.

To leverage on technological gains, the budget allocates KES 20.9 billion, this allocation includes:

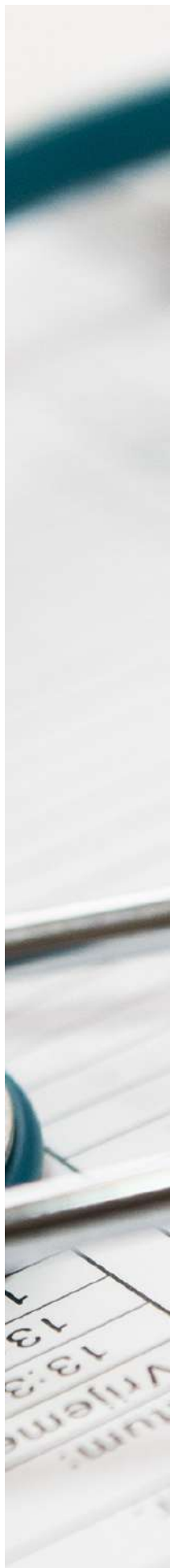
- KES 1.0 billion for Government Shared Services;
- KES 1.2 billion for maintenance and rehabilitation of the National Optic Fibre Backbone Phase II Expansion Cable;
- KES 1.1 billion for installation and commissioning of Eldoret-Nadapal Fibre Optic Cable; and
- KES 463.0 million for maintenance and rehabilitation of Last Mile County Connectivity Network

E-GOVERNMENT PROCUREMENT

The government looks to continue last year's plan to automate public procurement. A deadline has been set for 31 December 2021 for the roll out of an end-to-end procurement system.

DIGITIZATION OF LAND RECORDS

The Cabinet Secretary indicated that significant progress has been made to enhance efficiency, transparency and certainty in land matters by reengineering the land registration processes and the digitization of land records.



WORK FORCE

POVERTY REDUCTION, WOMEN AND YOUTH EMPOWERMENT

- KES 3 billion proposed under the Kazi Mtaani Initiative for youth empowerment and empowerment. The program in FY21/22 aims at creating over 100,000 job opportunities.
- KES 1 billion allocated Kenya Wildlife Services to engage 5,500 community scouts in wildlife conservation areas across the 47 counties.
- To empower the youth and support businesses owned by youth, women and persons living with disabilities, KES 10 billion proposed for the National Youth Service; KES 4.2 billion for the Kenya Youth Empowerment and Opportunities Project;
- KES 454.1 million has been allocated for the Youth Enterprise Development Fund along with KES 120.0 million for the Women Enterprise Fund; and KES 62 million for the Youth Employment and Enterprise Fund.

EDUCATION

- KES 2.5 billion proposed for the recruitment of teachers
- KES 1.0 billion planned for the Competency Based Curriculum and KES 420.0 million for the Digital Literacy Programme and ICT Integration in Secondary Schools.
- Under the Economic Stimulus Programme, KES 6.4 billion set aside for improving education outcomes and KES 633.0 million for promotion of Youth Employment and Vocational Training.
- KES 1.4 billion proposed for the Kenya Industry and Entrepreneurship Project; KES 800 million for the Kenya Youth Employment and Opportunities Project; KES 448 million for Industrial Research Laboratories; and KES 199.5 million for Constituency Industrial Development Centers.





BIG FOUR AGENDA

- Implementation of priority programs under the Big Four agenda has been cited as a critical path to supporting sustainable economic recovery and accelerating employment creation.
- Approximately KES 9.6 billion has been allocated for special economic zones, textile parks and industrial park facilities to unlock additional employment opportunities.
- The government has approved 13 motor vehicle and 17 motorcycle assemblers. These local assemblers have created employment opportunities while also saving the country substantial foreign exchange.



4 INCOME TAX

EXPANSION OF TAX REBATE FOR APPRENTICESHIPS

Under the new proposal, an employer who hires at least 10 university or technical and vocational education training students for a period of six months or more in a particular year of income, shall be eligible for tax rebate in the year subsequent to the year of such engagement.

The expansion increases the pool from which employers can draw apprenticeships and still qualify for the tax rebate. With the current emphasis on technical and vocational training to solve the unemployment problem, this is a welcome move as it will encourage employment of not only those with university education, but also those that have technical and vocational training.

Proposed effective date: 1 January 2022

MINING RIGHTS

Under the new provision, one does not require a mining right to claim capital allowances on machinery used to undertake mining operations.

This will enhance the investment in exploration activities due to the removal of the requirement to obtain a mining right which might, in the long run, lead to the discovery of minerals.

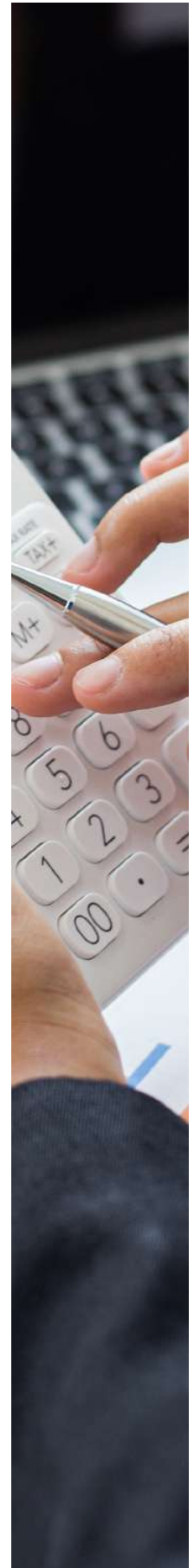
Proposed effective date: 1 January 2022

LIMITATION OF BENEFIT ON DOUBLE TAXATION AGREEMENTS

The new proposal provides that if an arrangement for relief from double taxation results in reduced tax being payable in Kenya by a person who is a resident of the other contracting state, such benefit shall not accrue to the person if fifty percent or more of the underlying ownership of the person is held by a person or persons who are not residents of the other contracting state.

the proposed amendment seeks to align with international best practices on beneficial ownership. This implies that an assessment of who the ultimate beneficial owner is, whether at individual or corporate level, should be carried out prior to applying the reduced tax rate or exemption.

Proposed effective date: 1 July 2021





PRIVATE ELECTRICITY COMPANIES

The Bill proposes to remove the current requirement that electricity must be supplied to the National Grid for the generation of the same to fall under the definition of “manufacture”.

A person investing in electricity generation for private business use, or for sale to persons of their choice, will now qualify for investment deduction on qualifying costs. Should the government license private electricity companies, this will be a welcome move as it will eliminate the monopoly of electricity distribution currently enjoyed by the KPLC.

Proposed effective date: 1 January 2022



CAPITAL ALLOWANCE RATE FOR EXTRACTIVE SECTOR MACHINERY

Under the new provision, the rate of capital allowance for machinery first used to undertake operations under a prospecting right shall be 50% in the first year of use and 25% per year, on a straight line basis for the balance.

The proposed change is to align the provisions of the capital allowances provided for companies in the extractive industry under the Ninth Schedule to mirror similar provisions under the Second Schedule to the Income Tax Act.

Proposed effective date: 1 January 2022

WHAT QUALIFIES AS AN INFRASTRUCTURE BOND

The Bill proposes to define infrastructure bond to mean “a bond issued by the government for the financing of a strategic public infrastructure facility including a road, hospital, port, sporting facility, water and sewerage systems.

The current provision does not define infrastructure bond and this definition is a welcome move as it provides clarity of the nature of infrastructure the government intends to construct using the proceeds of the infrastructure bonds.

Proposed effective date: 1 July 2021

NEW THIN CAPITALISATION RATIO

The Bill proposes to align interest restriction for contractors or licensee for mining and petroleum operation to other sectors.

Contractors or licensees for mining and petroleum operations will now enjoy more favourable interest restriction terms.

This move also encourages investment in mining and petroleum operations and hopefully create more employment opportunities as well as expand the tax revenue base for the government.

Proposed effective date: 1 January 2022





DIGITAL SERVICES TAX

The Bill proposes to impose income tax on income accruing from businesses carried out over the internet or an electronic network, including through a digital marketplace.

A “digital marketplace” will mean an online platform which enables users to sell or provide services, goods or other property to other users.

This proposal, if passed, will bring into the ambit of income tax, multiple businesses that are conducted through the internet without employing online platforms. This will bring into the ambit of taxation, merchants who use social media platforms to market their products and services and generate income from such an activity.

Proposed effective date: 1 July 2021

DIGITAL SERVICES TAX EXEMPTIONS

The Bill proposes to exempt nonresident businesses that transmit messages via cable, radio, fiber, TV broadcasting, VSAT, internet, satellite or other such methods of communication from DST.

Proposed effective date: 1 January 2022

TAX LOSSES – REMOVAL OF THE 10 YEAR LIMIT

The Bill proposes to eliminate the 10- year limit provided to utilize taxable losses.

The removal of the 10-year limit to utilize allowable losses will be a welcome move especially considering that many businesses have been negatively impacted by the COVID-19 pandemic and therefore are unable to generate sufficient taxable profits to offset against tax losses from prior years.

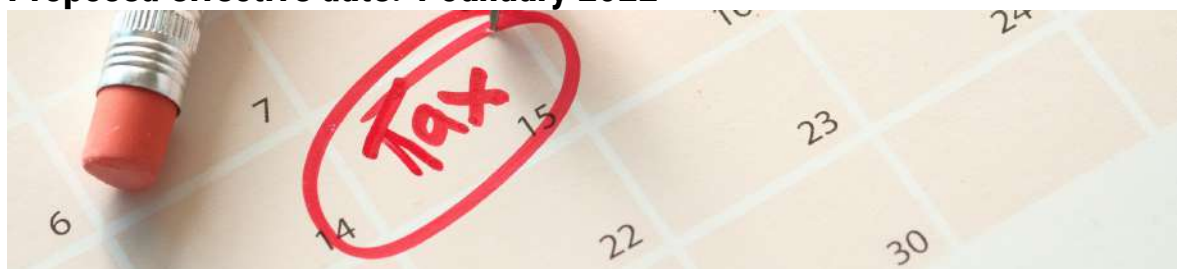
Proposed effective date: 1 July 2021

INSURANCE RELIEF – NHIF CONTRIBUTIONS

The Bill proposes to extend insurance relief to include National Health Insurance Fund (NHIF) contributions.

This is a welcome proposal as it would cover a majority of Kenyans who pay NHIF contributions but are unable to enjoy the insurance relief afforded on premiums paid to other life insurance schemes.

Proposed effective date: 1 January 2022



WITHHOLDING TAX IN THE MINING AND PETROLEUM SECTOR

The Bill proposes to increase the withholding tax rate for the fees paid to a non-resident for the provision of services to a licensee or contractor in respect of mining or petroleum operations from a rate of 5.625% to 10%.

It is important to note that the earlier rate of 5.625% was arrived at by factoring the non-resident corporation tax rate of 37.5% multiplied by the estimated revenue of 15%. However, no formula has been provided in arriving at the proposed rate of 10%.

Proposed effective date: 1 July 2021

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;
 - 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.

Proposed effective date: 1 July 2021



5 VALUE ADDED TAX (VAT).

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.

Proposed effective date: 1 July 2021

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.

Proposed effective date: 1 July 2021

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.

Proposed effective date: 1 July 2021

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.

Proposed effective date: 1 July 2021

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 piyropnonwoven 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 3003.41.00,3003.42.00,3003.43.00,3003.49.00,3003.60.00	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 effective date: 1 July 2021

PROPOSED VAT EXEMPTION FOR TRANSACTIONS UNDER REAL ESTATE INVESTMENT TRUSTS

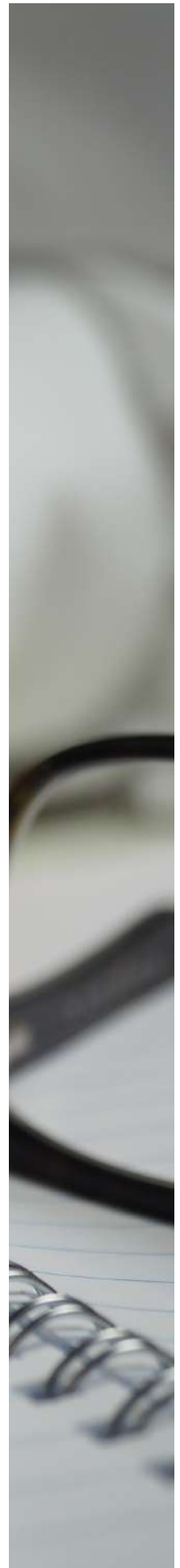
The Bill proposes to exempt from VAT transfer of assets and other transactions related to the transfer of assets into real estate investment trusts and asset-backed securities. Currently, this is standard rated. This aims to spur growth in the Real Estate sector.

Proposed effective date: 1 July 2021

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.

Proposed effective date: 1 July 2021



6 EXCISE DUTY

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.

Proposed effective date: 01 July 2021

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.

Proposed effective date: 01 July 2021

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.

Proposed effective date: 01 July 2021

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.

Proposed effective date: 01 July 2021

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.

Proposed effective date: 01 July 2021

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.

Proposed effective date: 01 July 2021

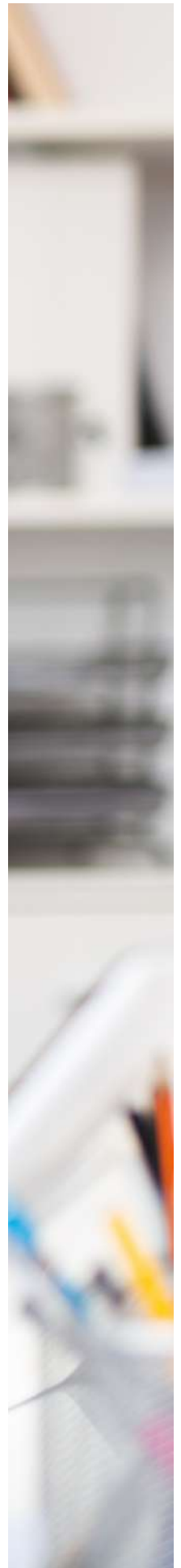
EXCISE DUTY ON BETTING

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.

Proposed effective date: 01 July 2021



7 TAX PROCEDURES ACT

SCOPE OF TPA TO INCLUDE MISCELLANEOUS FEES AND LEVIES ACT

The Bill proposes to amend the definition of “tax law” in the Tax Procedures Act (TPA) to include the Miscellaneous Fees and Levies Act, 2016 (MFLA).

The proposed inclusion of the MFLA as part of the scope of the TPA will facilitate consolidation and harmony in the administration of tax laws.

Proposed effective date: 01 July 2021

FINANCIAL INSTITUTIONS TO REPORT TO KRA

The Bill proposes to introduce a mandatory requirement for financial institutions to conduct due diligence procedures and report to the Commissioner.

The proposed requirement to report applies to financial institutions that are resident in Kenya and foreign branches located in Kenya.

The Finance Bill also proposes to impose a penalty of KES 100,000 for each false statement or omission, or an imprisonment of a term not exceeding 3 years or both.

Proposed effective date: 01 July 2021

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.

If passed into law as is, tax payers will be required to retain records and documents for 7 years, like was the case under the Income Tax Act, Cap 470. KRA will also be able to assess taxpayers for up to 7 years from the date of filing of the last return.

Proposed effective date: 01 July 2021

ABOLITION OF AMNESTY ON TAX ON RENTAL INCOME

The Bill proposes to delete Section 37A of the TPA which bars the Commissioner from recovering taxes, interests and penalties for rental income before or during 2013 year of income.

This is a cleanup of the TPA to remove the amnesty whose period has since expired. In addition, the open voluntary tax disclosure programme would cover such income.

Proposed effective date: 01 July 2021

8 MISCELLANEOUS FEES AND LEVIES ACT (MFLA)

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.

Proposed effective date: 1 January 2022

REFUND OF EXCESS IDF & RDL

The Bill proposes to provide for refund of overpaid Import Declaration Fee (IDF) and Railway Development Levy (RDL) and the imposition of penalties and interest on unpaid sums.

The proposed amendment is in line with the overall amendment of the scope of the TPA to include the MFLA. Going forward, taxpayers will be able to obtain a refund for overpaid RDL and IDF but should also be cautious of the penalties.

Proposed effective date: 1 July 2021



9 CAPITAL MARKETS ACT

TIME LIMIT FOR DETERMINATION OF MATTERS AT THE CAPITAL MARKETS TRIBUNAL

The Bill proposes to amend the Capital Markets Act to provide a definite time period within which the Capital Markets Tribunal shall hear and determine an appeal.

Under the Bill, the Tribunal shall hear and determine an appeal before it within 90 days from the date of filing of the appeal.

The amendment is likely to improve efficiency in the capital markets and ensure speedy dispute resolution.

Proposed effective date: 1 July 2021



10 INSURANCE ACT

REGULATION OF INSURANCE BROKERS

The Bill seeks to amend the Insurance Act to provide for the regulation of foreign reinsurance brokers by amending the definition of brokers which previously excluded the brokers who are not resident in Kenya.

The proposed regulation of insurance brokers is likely to enhance the Insurance Regulatory Authority's supervision insurance industry players.

Proposed effective date: 1 January 2022

REMOVAL OF REQUIREMENT OF KENYA REINSURANCE CORPORATION TO CERTIFY REINSURANCE CONTRACTS

The Bill seeks to amend the Insurance Act to remove the requirement to have the Kenya Reinsurance Corporation certify reinsurance contracts.

The proposed amendment is perhaps informed by the realization that there are several reinsurance players in Kenya.

Proposed effective date: 1 July 2021





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