KENYA
THE FINANCE ACT, 2022

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Publication Summary

The Finance Act ("the Act"), 2022 received Presidential assent on 21st June 2022. Most of the changes will be effective from 1st July 2022, which is the Government's fiscal year, while a few will be effective from 1st January 2023. In large, most of the proposed changes in the Finance Bill, 2022 have been maintained in the Act, with a few additions.

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PART 1:
INTRODUCTION

The Finance Act ("the Act"), 2022 has now received the required Presidential assent on the 21st of June 2022. Most of the changes will be effective from 1St July 2022, with the remaining on 1st January 2023. Most of the proposed changes in the Finance Bill, 2022 have been maintained in the Act, with a few additions. This publication will cover the changes that were maintained in the Finance Act, any new additions that were not previously included in the Finance Bill and proposals in the Finance Bill that were not passed as law by the Finance Act. Some of the highlights of the Act are as follows:

- Increase in Capital Gains Tax rate from 5% to 15%;
- Transfer pricing and reporting requirements for multinational enterprises;
- Introduction of withholding tax on gains from financial derivatives;
- Restriction on VAT return amendments to prevent deduction of input tax that is more than 6 months.

The proposals that did not pass within the Act include:

- Tax increase from 1.5% to 3% for Digital Service Tax (DST).
- The requirement whereby a taxpayer must deposit 50% of the tax in a dispute before they can appeal within the Tax Appeals Tribunal.

The breakdown of the changes can be found below:

Direct Taxes:

- Thin Capitalization
- Foreign Exchange Losses
- Charitable Donations
- Taxation of Gains Payable By Non-Residents From Financial Derivatives
- Capital Gains Tax
- Digital Services Tax
- Preferential Tax Regimes
- Exchange of Information
- Special Operating Framework
- Spousal Insurance Relief
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- Horse Racing

Road Maintenance Levy Fund Act

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- Waiver Of Penalties & Voluntary Disclosure Program

Statutory Instruments Act

- Automatic Revocation Of Statutory Instruments
- Statutory Instruments Relating To Taxes, Levies Or Fees

PART 1:
DIRECT TAXES

Thin Capitalization

The Finance Act, 2021 previously had changed the basis for interest restriction under thin capitalization rules from using the ratio of debt to equity of 3:1 to 30% of Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA). Banks and other financial institutions were exempted primarily due to their business operating model which largely involves borrowing of funds for onward lending. The following have now also been excluded from the thin capitalization rules.

- Microfinance institutions licensed and non-deposit taking microfinance institutions licensed under the Microfinance Act, 2006
- Entities licensed under the Hire Purchase Act;
- Non-deposit taking institutions involved in lending and leasing business;
- Companies undertaking the manufacture of human vaccines;
- Companies engaged in manufacturing whose cumulative investment in the preceding five years from the commencement of this provision is at least five billion shillings;
- Companies engaged in manufacturing whose cumulative investment is at least Ksh 5 Billion where the investment shall have been made outside Nairobi City County and Mombasa County; and
- Holding companies that are regulated under the Capital Markets Act.

....Effective date will be 1st July 2022. ✓

Foreign Exchange Losses

The Act now provides for the deferment of realized foreign exchange loss for a company whose gross interest paid or payable to related persons and third parties exceeds 30% of the company's earnings before interest, taxes, depreciation and amortization in any financial year. However, these provisions, do not apply to persons exempted from thin capitalization rules. This means that the new provision aligns with the thin capitalization rules introduced by the Finance Act, 2021.

....Effective date will be 1st July 2022 ✓

Charitable Donations

PART 1:
DIRECT TAXES

The Act has expanded the scope of deductibility of donations against taxable income as follows:

- It now allows for any donation (in any form) as opposed to only cash donations
- It now only requires organizations to have their income exempt from tax under Paragraph 10 of the First Schedule to the ITA, regardless of how those are registered
- It is extended to cover donations made to projects that have been approved by the Cabinet Secretary responsible for matters relating to finance.

In previous versions of The Act, a donation was only deductible if it was given in cash and to an income tax-exempt charitable organization registered under the Societies Act or the Non-Governmental Organizations Co-ordination Act, 1990.

....Effective date will be 1st July 2022 ✓

Taxation of Gains Payable By Non-Residents From Financial Derivatives

The enacted provision brings to tax gains accruing to non-resident persons from transactions involving financial derivatives in Kenya, excluding financial derivatives traded on the Nairobi Securities' Exchange. The Act defines a financial derivative to mean "a financial instrument the value of which is linked to the value of another instrument underlying the transaction which is to be settled at a future date." The gains will be subjected to withholding tax at 15%, subject to Regulations to be issued by the CS National Treasury.

....Effective date will be 1st January 2023 ✓

Capital Gains Tax

The Act has increased the CGT rate from 5% to 15%. Firms certified by the Nairobi International Financial Center Authority (NIFC) that invest at least Ksh 5 Billion in Kenya and transfer such investment after 5 years shall be subject to CGT at the rate that was prevailing at the time the investments were made. This move is designed to align the Kenyan CGT rate with the regional CGT rates, despite stakeholders' proposal to retain the same at 5% given the fact that significant portion of capital gains on disposal of properties is often attributable to inflation.

....Effective date will be 1st January 2023 ✓

PART 1:
DIRECT TAXES

Digital Services Tax

The Act now mentions specifically that non-residents with a permanent establishment (PE) in Kenya have been excluded from the DST regime. This amendment therefore means that only non-residents who don't have a PE in Kenya will be liable to DST, as residents had already been excluded from the regime effective 1 July 2021. The income of a non-resident operating in Kenya through a PE is subject to corporate income tax (CIT) in Kenya. Taxing such persons through the DST regime would lead to aggressive taxation, however since the provision that allowed DST to be set-off against CIT was deleted effective 1 July 2021, the amendment is good.

....Effective date will be 1st July 2022 ✓

Preferential Tax Regimes

The Act has now repealed the purview of what is considered preferential tax regime for arms-length pricing (that mainly focused on domestic transactions) with one that seeks to include transactions with foreign jurisdictions that meet at least one of the following criteria:

- Do not tax income
- Have a domestic income tax rate of less than 20%
- Do not have a framework for exchange of information
- Do not allow access to banking information
- Lack transparency on corporate structure, legal ownership, beneficial owners, financial disclosure, or regulatory supervision

It is noteworthy that the new provision includes transactions with both related parties and third parties operating in preferential tax regimes. This move harmonizes with Kenya's commitment to implement the four minimum standards as an associate member of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS). A Kenyan taxpayer who engages in transactions with entities in a preferential tax regime will need to prove that the prices charged for goods and/or services comply with the arm's-length principle. It remains to be seen whether this will pose additional administrative requirements on Kenyan taxpayers especially where the transactions are with third parties.

....Effective date will be 1st January 2023 ✓

PART 1:
DIRECT TAXES

Exchange Of Information

The Act now has introduced the provisions where an ultimate parent of a multinational enterprise is required to submit to the Commissioner a return describing the group's financial activities in Kenya. This provision is applicable for the return of the year of income 2022 and any subsequent years of income, with the failure to comply with the will amount to an offence and be subject to the penalties as prescribed under the Tax Procedures Act, 2015.

A multinational enterprise group or a constituent entity, other than an excluded multinational enterprise group, that is resident in Kenya, shall notify the Commissioner, not later than the last day of the reporting financial year of that group:

- Whether or not it is the ultimate parent entity of the group,
- In case it is not the ultimate parent entity of the group is it is a "surrogate parent entity", or
- In cases the above do not apply, the identity of the constituent entity which the ultimate parent entity or surrogate parent entity and the tax residence of that constituent entity.

The notification shall be made to the Commissioner, in a manner that the Commissioner may specify. The meaning of the phrase "surrogate parent entity" means one constituent entity of the multinational enterprise group appointed by such group to file the country-by-country report in that constituent entity's jurisdiction of tax residence, on behalf of the group. The amendment by The Act now requires multi-national companies that have operations in Kenya to have operations in Kenya to report their activities with Kenya and other jurisdictions to the Commissioner.

An ultimate parent entity shall file the country-to-country report no later than 12 month after the last day of the reporting financial year of the group. An ultimate parent entity or a constituent entity of a multinational enterprise group shall file a master file and a local file shall be filed not later than 6 months after the last day of the reporting financial year of the multinational enterprise group. The Commissioner shall maintain the confidentiality of the information, and if the requirement is not complied with, it constitutes an offense. A country-by-country report shall include the following:

- The information relating to the identity of each constituent entity, its jurisdiction of tax residence, if different, jurisdiction where such entity is organized, and the nature of the main business activity or activities of such entity;

- The group's aggregate information including information relating to:
  - Revenue
  - Profit or Loss Before Income Tax
  - Income Tax Paid
  - Income Tax Accrued
  - Stated Capital
  - Accumulated Earnings
  - Number of Employees
  - Tangible Assets Other Than Cash or Cash Equivalents With Regards To Each Jurisdiction
- Any other information as may be required by the Commissioner

A Master File shall contain:

- A detailed overview of the group
- The group's growth engines
- A description of the supply chain of the key products and services
- The group's research and development policy
- A description of each constituent entity's contribution to value creation
- Information about intangible assets and the group's inter-company agreements associated with them;
- Information on any transfer of intangible assets within the group during the tax period, including the identity of the constituent entities involved, the countries in which those intangible assets are registered and the consideration paid as part of the transfer
- Information about financing activities of the group
- The consolidated financial statements of the group
- Tax rulings, if any, made in respect of the group, and
- Any other information that the Commissioner may require

A Local File shall contain:

- Details and information on the resident constituent entity's activities within the multinational enterprise group,
- Management structure of the resident constituent entity,
- Business strategies including structuring, description of the material-controlled transactions,
- The resident constituent entity's business and competitive environment,

- The international transactions and amounts paid to the resident constituent entity or received by the entity, and
- Any other informational that the Commissioner may require.

Where there are more than one constituent entities of the same multinational enterprise group that are resident in Kenya, the multinational enterprise group may designate one of such constituent entities as a surrogate parent entity. A resident surrogate parent entity of a multi-national enterprise group shall not be required to file a country-by-country report with the Commissioner with respect to the reporting financial year of the group, if:

- The ultimate parent entity is obligated to file a country-by-country report in its jurisdiction of tax residence;
- The jurisdiction in which the ultimate parent entity is resident for tax purposes has an international agreement and a competent authority agreement in force, and
- The commissioner has not notified the resident constituent entity in Kenya of a systematic failure, if any.

..........Effective date will be 1st July 2022 ✓

Special Operating Framework

The Finance Act has amended the Income Tax Act by introducing Section 28A to outline the rate of tax for businesses under a special operating framework arrangement with the Government. Based on the new section, a company which:

- Engages in business under a special operating framework arrangement with the Government;
- Incorporated for purposes of undertaking the manufacture of human vaccines;
- Capital investment is at least Ksh 10 Billion.

shall be subject to the rate of tax specified in the special operating framework arrangement with the Government.

..........Effective date will be 1st July 2022 ✓

Spousal Insurance Relief

The Act has now amended the section on persons eligible for insurance relief to remove any scope of gender bias. The Act changes the wording to have eligibility of insurance relief granted to any gender depending on who has taken the insurance. The implication is that wives will now also be eligible for insurance relief in cases where they have taken life coverage for the benefit of their husband.

....Effective date will be 1st July 2022 ✓

Investment Deductions

The Act introduces an amendment to the provision where investment deduction shall be 100% where the cumulative investment value in the 3 preceding years outside Nairobi City County and Mombasa City County shall be at least Ksh 3 Billion. Provided that where the cumulative value of investment for the preceding 3 years of income was Ksh 2 Billion on or before the 25th April 2020, and the applicable rate of investment deduction was 150%, that rate shall continue to apply for the investment made on or before the 25th April 2020 or the investment deduction shall be 150% where the cumulative investment value for the preceding 4 years from the date of this provision comes into force or the cumulative investment for the succeeding 3 years outside of Nairobi City County or Mombasa City County is at least Ksh 2 Billion.

The Act has further also extended the period for claiming investment deduction to 31st December 2023 on capital expenditure incurred on the construction of bulk storage that can hold 1 metric tonnes of supplies or more, and handling facilities for supporting the SGR operations.

....Effective date will be 1st July 2022 ✓

PAYE Penalties

The Act has deleted Section 37(3) of the ITA, which allowed the Commissioner to remit penalties amounting to not more than Ksh 500,000 in relation to PAYE from one employer in a year of income without the approval of the Minister. In doing so, the amendment has also deleted the provision requiring the Commissioner to provide quarterly reports to the CS National Treasury of all penalties remitted in that quarter.

PART 1:
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This amendment will now ensure the administration of all the tax heads including PAYE are under the TPA.

....Effective date will be 1st July 2022 ✓

Manufacturers of Human Vaccines & Special Economic Zones (SEZs)

The Act has exempted the following from income tax :

- Deemed interest in respect of an interest free loan advanced to a company undertaking the manufacture of human vaccines.
- Payments made to nonresident service providers not having a permanent establishment in Kenya in respect of services provided to a company undertaking the manufacture of human vaccines.
- Compensating tax accruing to a company undertaking the manufacture of human vaccines.
- Dividends paid by a company undertaking the manufacture of human vaccines to any non-resident person.
- Income of a company undertaking the manufacture of human vaccines.
- Dividends paid by SEZ enterprises, developers and operators licensed under the Special Economic Zones Act.
- Dividends paid by SEZ enterprises, developers, and operators to any nonresident person.

....Effective date will be 1st July 2022 ✓

Rates Of Tax

The Act has amended the Third Schedule of the ITA to amend the rates of tax as follows:

- A resident company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority- 15% for the first ten years from the year of commencement of its operations.
- A resident company operating a shipping business in Kenya - 15% cent for the first 10 years from the year of commencement of its operations.

....Effective date will be 1st July 2022 ✓

PART 1:
DIRECT TAXES

PAYE Changes

The Act has introduced a definition of 'Permanent Home' to include a place where an individual resides or which is available to that individual for residential purposes in Kenya, or where in the opinion of the Commissioner the individual's personal or economic interests are located. Implication: This amendment now clarifies the definition of a permanent home when determining tax residency.

The Act has amended the basis for the taxable benefit arising from employee share option plan to be the difference between the market value per share (on the date the employee exercises the option) and the offer price (on the date when the option is granted by employer).

In addition, the requirement to have ESOPs registered with the Commissioner as a collective investment scheme has been deleted. This means that:

- Previously, the difference between the offer price and market price was computed at the date the option was granted by the employer. The amendment takes into account the change in value of shares over time. Thus, taxing the benefit on the actual cost to the employer as at the date the benefit crystallizes.
- The deletion of the requirement to have the ESOPs registered with the Commissioner provides clarity on taxation of unregistered schemes which includes ESOPs provided by non-resident parent companies of companies that are based in Kenya.

..........Effective date will be 1st July 2022

PART 2:
VALUE ADDED TAX (VAT)

VAT On Digital Services

The Act has amended the definition of a "digital marketplace" under Section 5(9) of the Value Added Tax (VAT) Act by replacing the words "sell or provide services, goods or other property" with "sell goods or provide services." The new definition is now precise, and it avoids ambiguity in interpretation.

The Act has exempted digital marketplace supplies or supplies made over the internet or an electronic network from the ambit of reverse VAT (VAT on imported services). This serves as a big relief to importers of digital marketplace supplies as they will not be required anymore to account for the resultant VAT on imported digital services.

The Act has clarified that the annual turnover threshold of Ksh 5m for VAT registration will not apply to suppliers of imported digital services/supplies. This means that all digital suppliers will be required to register for and account for VAT regardless of their annual turnover.

....Effective date will be 1st July 2022 ✓

Treatment Of Imported Services

Section 10(1) of the VAT Act states that if a supply of imported taxable services is made to any person, the person shall be deemed to have made a taxable supply to himself (reverse VAT). The Finance Act 2022 exempts the applicability of reverse VAT provisions on taxable supplies made over the internet or an electronic network or through a digital marketplace.

The above provision conflicts with the Digital Marketplace Regulations as non-resident persons providing digital services in a B2B arrangement are not required to account for VAT in Kenya, since the recipient of the supply in Kenya will be the ones required to account for reverse VAT.

....Effective date will be 1st July 2022 ✓

Documents Required For Deduction Of Input Tax

The Finance Act, 2022 has included in the list of documents required as support of deductibility of input VAT, the custom entry in the case of a participant in the Open Tender System for the importation of petroleum products that have been cleared through a non-bonded facility. The custom entry should detail the name and PIN of the winner of the tender and the name of the other oil marketing company participating in the tender.

The input tax incurred by the oil marketing company participating in the Open Tender System prior to 1st July 2022 will be deductible provided that it shall be claimed within twelve months after this provision comes into force.

....Effective date will be 1st July 2022 ✓

Amendment Relating To Application Of VAT Refunds

The Finance Act, 2022 has increased the scope of VAT refunds to include any VAT credits arising from input tax incurred by a manufacturer in respect to taxable supplies made to an official aid funded project approved by the Cabinet Secretary in accordance with the First Schedule to the VAT Act, 2013.

If such VAT credits arose from Input VAT incurred before 1st July 2022, the taxpayer will be required to apply for a refund within 12 months.

....Effective date will be 1st July 2022 ✓

Penalties & Interest Relating To Importation Of Goods

The Act has amended Section 22 of the VAT Act by adding the following provisions under subsection (4): The Tax Procedures Act, 2015 shall apply with regard to imposition of interest and penalties; and in cases where interest becomes payable it shall not, in aggregate, exceed the principal tax. This amendment thus brings clarity on the applicable penalties and interest on VAT on imported goods which are subject to customs control as there has been confusion on whether the penalties stipulated in EACCMA were applicable or the provisions under the TPA.

....Effective date will be 1st July 2022 ✓

Refund Of Tax Paid In Error

PART 2:
VALUE ADDED TAX (VAT)

The Act has repealed Section 30 of the VAT Act, thus deleting the provisions under the VAT law relating to refund of VAT paid in error. The Act has also introduced Section 47A and 47B of the Tax Procedures Act (TPA) as a solution for taxes paid in error. Based on the amended Sections of the TPA, a claim for refund of tax paid in error should be lodged within six months after the date of the tax payment. The time limit within which a taxpayer should lodge a refund of VAT paid in error has been halved from the twelve months that was allowed under the deleted Section 30 of the VAT Act.

....Effective date will be 1st July 2022 ✓

Exemption On Taxable Supplies

Prior to the new amendment, taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for Health, was exempt from VAT.

These supplies will now be subject to VAT at 16%. However, the supplies to constructors who had obtained an approval before 1st July 2022 will continue as exempt until the supply of the goods is made in full.

....Effective date will be 1st July 2022 ✓

Amendments To The First & Second Schedule

Supplies	New Rate	Old Rate
Taxable goods and Services for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the CS upon recommendation by the CS responsible for Health, who may issue guidelines for determining eligibility for the exemption.	16%	Exempt

PART 2:
VALUE ADDED TAX (VAT)

Supplies	New Rate	Old Rate
Supply of liquefied petroleum gas including propane	8%	16%
Sustainable fuel briquettes and pellets or household and commercial use	Exempt	Exempt
Plant and machinery of Chapter 84 and 85 imported by manufacturers of pharmaceutical products or investors in the manufacture of pharmaceutical products upon the recommendation of the Cabinet Secretary responsible for matters relating health	Exempt	16%
Medical oxygen supplied to registered hospitals	Exempt	16%
Urine bags, adult diapers, artificial breasts, colostomy or ileostomy bags for medical use	Exempt	16%
Inputs and raw materials used in the manufacture of passenger motor vehicles	Exempt	16%
Locally Manufactured passenger motor vehicles: Provided that in this paragraph "locally manufactured passenger MV" shall mean a MV for the transportation of passengers which is manufactured in Kenya and whose ex-factory value comprises at least 30% of parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya For this purpose, "local content" means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya	Exempt	16%

PART 2:
VALUE ADDED TAX (VAT)

Supplies	New Rate	Old Rate
Taxable goods, inputs and raw materials imported or locally purchased by a company which is engaged in business under a special operating framework arrangement with the Government; and incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least Ksh 10 Billion, subject to approval of the CS for the National Treasury, on recommendation of the CS for health.	Exempt	16%
Such capital goods the exemption of which the CS may determine to promote investment in the manufacturing sector: Provided that the value of such investment is not less than Ksh 2 Billion.	Exempt	16%
Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon recommendation by the CS responsible for health, who shall issue guidelines for the criteria to determine the eligibility for the exemption	16%	Exempt
Supply of Protective Apparel, Clothing Accessories and Equipment. Articles of apparel, clothing accessories and equipment specially designed for safety or protective purposes for use in registered hospitals and clinics or by county or local authorities in firefighting.	16%	0%
The exportation of taxable services.	16%	Exempt
The exportation of taxable services in respect of business process outsourcing	0%	Exempt

PART 2:
VALUE ADDED TAX (VAT)

Supplies	New Rate	Old Rate
Fertilisers of Chapter 31	0%	Exempt
Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the CS upon recommendation by the CS responsible for Health who may issue guidelines for determining eligibility for the exemption	16%	Exempt
Bioethanol vapour (BEV) stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel)	Exempt	16%
Taxable goods, inputs and raw materials imported or locally purchased by a company which Is engaged in business under a special operating framework arrangement with the Government; and is incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least Ksh 10 Billion, subject to approval of the CS for the National Treasury, on recommendation of the CS for Health.	Exempt	16%
Inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved from time to time by the CS responsible for Agriculture.	0%	16%

PART 3:
EXCISE DUTY

Annual Inflationary Adjustment of Excise Duty Rates

The Act has amended the annual inflation adjustment provision to empower the Commissioner General, by notice in the Gazette and with the approval of the CS, to exempt specified products from inflation adjustment after considering the circumstances prevailing in the economy in that year. This is to protect consumers from increase in prices due to annual inflation adjustments on excise duty of specified products. However, the Act does not provide the parameters that the Commissioner General will use in determining the products to be excluded from the inflation adjustment review.

..........Effective date will be 1st January 2023 ✓

Exemption On Neutral Spirit Used For Manufacture Of Pharmaceutical Products

The new amendment has exempted from excise duty spirits of undenatured ethyl alcohol (neutral spirit) used in manufacture of pharmaceutical products. Before the change, spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6% were subject to excise duty at Ksh 253 per litre. The amendment is a welcome move and will contribute greatly on reduction of costs incurred in the manufacture of pharmaceutical products.

..........Effective date will be 1st July 2022 ✓

Exemption On Locally Manufactured Passenger Motor Vehicles

The Act has exempted local passenger vehicles from excise duty. The phrase "Local passenger vehicles" has been defined as vehicles for transportation of passengers manufactured in Kenya and whose ex-factory value comprise at least 30% of local content. "Local content" has also been defined as parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

..........Effective date will be 1st July 2022 ✓

Excise Duty Chargeable On Liquid Nicotine

PART 3:
EXCISE DUTY

The Act has deleted from the First Schedule electronic cigarettes (which attracted Ksh 4,171.59 per unit excise duty) and cartridges used in electronic cigarettes (which attract KES 2,781.43 per unit excise duty). In its place, the following classifications have been introduced:
Liquid nicotine for electronic cigarettes at Ksh 70 per milliliter

....Effective date will be 1st July 2022 ✓

Definition Of Ex-Factory Selling Price

The Act has amended Section 11 of the Excise Duty Act to read as follows: The ex-factory selling price of excisable goods shall be: if the excisable goods are sold by the manufacturer in an arm's length transaction, the price payable by the purchaser. This deletion implies that the ex-factory selling price for controlled transactions at arm's length will be the price payable by the purchaser.

....Effective date will be 1st July 2022 ✓

Enforcement Of Excise Duty Payments On Importation Of Goods

The Act has amended Section 36(4) of the Excise Duty Act to provide that the penalties and interest applicable on late payment of excise duty on imports shall be in line with the rates provided for by the Tax Procedures Act i.e. 5% penalty and 1% interest per month.

The amendment also provides that where interest is charged, such interest should not exceed the principal tax due. Currently, Section 36(4) provides that: For assessing, collecting, accounting and enforcing the payment of excise duty on the importation of goods into Kenya, the East African Community Customs Management Act, 2005 shall apply as if excise duty were customs duty. The amendment has brought clarity on the chargeability penalties and interest on excise duty amounts due.

....Effective date will be 1st July 2022 ✓

Excise Duty On Plastics

The new amendment by the Finance Act, 2022 has introduced excise duty on plastics of tariff 3923.90.90 at 10%. Prior to the amendment, only carboys, bottles, flasks and similar articles classified under tariff 3923.30.00 are subject to excise duty at 10% and will now include other articles for the conveyance or packing of goods of plastics, stoppers, lids, caps and other closures of plastics.

....Effective date will be 1st July 2022

Excise Duty On Imported Potatoes, Potato Crisps, Potato Chips & Electronic Cigarettes & Imported Ready To Use Sim Cards

The new amendment has introduced excise duty at 25% on potatoes of tariff 0710.10.00, 2004.10.00 and 2005.20.00. Prior to the amendment, only potatoes, fresh or chilled of tariff 07.01 were subject to excise duty at 25% This means that excise duty is now applicable on all imported potatoes thus increased prices.

The Act has also changed the description to include other nicotine delivery devices and charge excise duty at 40%. Before the amendment, electronic cigarettes were excisable at Ksh 3,787 per unit The amendment will see an introduction of excise duty on nicotine delivery devices which will help in curbing the use of these products. The Act has also introduced excise duty on imported ready to use sim cards at Ksh 50 per sim card.

....Effective date will be 1st July 2022

Exemption From Excise Duty On Betting Activities Relating To Horse Racing

The new amendment has excluded betting activities relating to horse racing from the provision of Paragraph 4A of Part II of the First Schedule to the Excise Duty Act, 2015. The amendment means that betting activities relating to horse racing will not be subject to excise duty at 7.5% on the amount wagered or staked.

....Effective date will be 1st July 2022

Change Of Excise Duty Rates

PART 3:
EXCISE DUTY

Item	New Rate	Old Rate
Electronic cigarettes	Deleted	Excisable at Ksh 3787/unit
Cartridge for use in electronic cigarettes	Deleted	Excisable at Ksh 2525/unit
Electronic cigarettes and other nicotine delivery devices	40%	N/A
Liquid nicotine for electronic cigarettes	Ksh 70/ml	N/A
Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether containing sugar or other sweetening matters	Ksh 13.30/ml	Ksh 12.17/ml
Cosmetics and beauty products of tariff heading Number 3303, 3304, 3305 and 3307	15%	10%
Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%	Ksh 134/ml	Ksh 121.85/ml
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Ksh 229/ml	Ksh 208.20/ml
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages exceeding 6% strength	Ksh 335.30/ml	Ksh 278.70/ml

PART 3:
EXCISE DUTY

Item	New Rate	Old Rate
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Ksh 15,296.6/kg	Ksh 13,906.04/kg
Cigarette with filters (hinge lid and soft cap)	Ksh 3825.99 per mille	Ksh 3447.61 per mille
Cigarettes without filters (plain cigarettes)	Ksh 2752.97	Ksh 2502.74
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	Ksh 10,707.88/kg	Ksh 9734.45/kg
Imported sugar confectionary of tariff heading 17.04	Ksh 40.37/kg	Ksh 36.74/kg
White chocolate, chocolate in blocks, slabs or bars of tariff numbers 1806.31.00, 1806.32.00, and 1806.90.00	Ksh 242.29/kg	Ksh 200/kg
Jewellery of tariff heading 7113 and imported jewellery of tariff heading 7117	15%	10%
Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to Health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences	Ksh 1500	Ksh 1200

PART 4 :
STAMP DUTY ACT

Stamp Duty Exemption For Mortgage-Related Instruments

The Act has amended Section 117 of the Stamp Duty Act to include "an instrument executed in favour of a mortgage refinance company" in the list of instruments exempt from stamp duty. This amendment is aimed at encouraging lenders to refinance their mortgages with the Kenya Mortgage Refinance Company or any other mortgage refinance company to make more money available for onward lending to eligible homeowners.

....Effective date will be 1st July 2022 ✓

PART 5 :
TAX PROCEDURES ACT

Supply Of Information Upon Change In Particulars Of Trusts

The Finance Act, 2022 has amended Section 9(1)(b) of the Tax Procedures Act, 2015 to require the notification of change of particulars of trusts, whether the trust is carrying out any business or not. Previous provision and amended provision. Every person carrying on business shall , within 30 days of the occurrence of the change, notify the Commissioner of any changes —

- In the place of business, trading name, PIN registration and registered address;
- In the case of: A trust, the full identity and address details of trustees and beneficiaries of the trust, whether the entity is carrying out business or not.

....Effective date will be 1st July 2022 ✓

Amendments Of Assessments

he Finance Act, 2022 has amended Section 31 (4) of the Tax Procedures Act, 2015 to add a provison that in case of VAT, the input tax shall be allowable for a deduction within 6 months after the end of the tax period in which the supply or importation occurred to align this with the VAT Act provisions.

....Effective date will be 1st July 2022 ✓

Offset Or Refund Of Overpaid Tax

The Act has amended the TPA to allow a taxpayer who has overpaid tax to make an application to the Commissioner in the prescribed form to offset the overpaid tax against the taxpayer's future tax liabilities or refund the overpaid tax within five years (for corporate income tax) or six months (for VAT). The applications will still be subject to an audit by KRA within a period of 90 days from the application date.

....Effective date will be 1st July 2022 ✓

Refund Of Tax Paid In Error

The Act has introduced Sections 47A and 47B to guide the refund of tax paid in error. A taxpayer will be required to apply for refund of tax paid in error to the Commissioner before it is refunded or utilized to set-off a tax liability. Refunds of tax paid in error shall be governed by the same rules proposed to govern refunds of overpaid tax. The introduction of provisions that deal with tax paid in error is welcome, as these provisions did not exist previously.

....Effective date will be 1st July 2022 ✓

Security On Property For Any Unpaid Tax

The definition of property that the Commissioner can use as security for unpaid tax has been widened. The definition of property consists of land, buildings, aircraft, ship, motor vehicle or any other property that the Commissioner may deem sufficient as security. Previously, only land and buildings qualified as security.

However, the Commissioner now has powers to dispose off the property used as security if the taxpayer does not settle the tax liabilities within 2 months of being notified by the relevant government Registrar. However, where a payment plan has been agreed between the taxpayer and the Commissioner on how to settle the tax, the liability should be settled within the agreed payment plan before the notification by the Commissioner is lifted.

....Effective date will be 1st July 2022 ✓

Objection To Tax Decision

The Commissioner should notify the taxpayer within 14 days if notice of objection is not validly lodged. Previously, the Commissioner was required to notify the taxpayer immediately. The application for extension of time to lodge notice of objection should be decided by the Commissioner within 14 days The Commissioner will be expected to issue an objection decision within 60 days from the day of receiving a valid objection by a taxpayer.

If the Commissioner does not issue the objection decision within 60 days , the taxpayer's objection is deemed allowed. Taxpayer may appeal to the TAT within 30 days of objection decision.

....Effective date will be 1st July 2022 ✓

PART 5 :
TAX PROCEDURES ACT

Withholding VAT

The Act through the amendment of the Section 42A of the TPA has included registered manufacturers whose value of investment in the preceding 3 years from the commencement of the TPA is at least Ksh 3 Billion. This means withholding tax does not need to be withheld by appointed agents on taxable value of zero rated supplies and registered manufacturers whose value of investments is Ksh 3 Billion in the preceding 3 years from the commencement of the TPA.

....Effective date will be 1st July 2022 ✓

PART 6 :
MISC. FEES & LEVIES ACT

Miscellaneous Fees And Levies Penalties

The Act has amended Section 9B of the Miscellaneous Fees and Levies Act, 2016 to include unpaid levies under the purview of items chargeable to penalties and interest as per the provisions of Section 47 of the Tax Procedures Act, 2015. The provisions of Section 47 of the Tax Procedures Act, 2015 shall apply for the purposes of the determination by the Commissioner of penalties and interests on fees and levies that remain unpaid.

....Effective date will be 1st July 2022 ✓

Import Declaration Fee (IDF) And Railway Development Levy (RDL)

The Act now exempts the following items from IDF:

- Inputs and raw materials imported by manufacturers of pharmaceutical products on the recommendation of the Cabinet Secretary responsible for matters relating to health
- Goods imported for use in the construction and maintenance of human vaccine manufacturing plants as approved by the Cabinet Secretary for the National Treasury on the recommendation of the Cabinet Secretary for Health
- Goods, inputs and raw materials imported by a company which is:
  - Engaged in business under a special operating framework arrangement with the Government
  - Incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least Ksh 10 Billion.

The Act has exempted the following items from RDL:

- Inputs and raw materials imported by manufacturers of pharmaceutical products on the recommendation of the Cabinet Secretary responsible for matters relating to health
- Goods imported for use in the construction and maintenance of human vaccine manufacturing plants as approved by the Cabinet Secretary for the National Treasury on the recommendation of the Cabinet Secretary for Health

PART 6 :
MISC. FEES & LEVIES ACT

- Goods, inputs and raw materials imported by a company which is:
    - Engaged in business under a special operating framework arrangement with the Government
    - Incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least Ksh 10 Billion.

..........Effective date will be 1st July 2022

Extra Duty On Supply From EPZ Not To Apply To Imports By CBK

Section 9A of the Miscellaneous Fees and Levies Act, 2016 was amended, adding that the additional duty at arate of 2.5% of the customs value payable in respect of goods entered for home use from an export processing zones enterprise, shall not apply to currency notes and coins imported by the Central Bank of Kenya.

..........Effective date will be 1st July 2022

Introduction Of Export Levy On Iron Ores And Concentrates

The Act has amended Part I of the First Schedule to the Miscellaneous Fees and Levies Act to introduce an export levy on iron ores and concentrates, including roasted iron pyrites at USD 175 per tonne. Iron ore is a critical ingredient in the steel making industry. Kenya has discovered deposits of iron ores in counties like Kilifi.

..........Effective date will be 1st July 2022

Change Of Date For Inflation Adjustment For Export Levy

The Act has amended the effective date for inflationary adjustment of export levies from 1 July of every year to a date before 1 October of every year.

..........Effective date will be 1st July 2022

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PARTS 7, 8, 9, 10, 11, 12 & 13: OTHER ACTS

PART 7: EVIDENCE ACT

Revenue Officers

The definition of a "revenue officer" under the Evidence Act, has now been changed in subsection (1) to read "No judge, magistrate or police officer shall be compelled to say when he got any information as to the commission of any offence, and no revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the law relating to the public revenue or the income tax customs or excise the laws specified in the First Schedule to the Kenya Revenue Authority Act, 1995"; and In subsection (2) to read "For the purposes of this section, "revenue officer" means any officer employed in or about the business of any branch of the public revenue, including any branch of the income tax, customs or excise departments."

....Effective date will be 1st July 2022 ✓

PART 8: CAPITAL MARKET AUTHORITY ACT

Investment Advisors

The Act has amended the definition of "Investment Advisor" by deleting subparagraph 3. The subparagraph restricted the total value of the portfolio that could be managed by investment advisors to that prescribed by the Capital Markets Authority from time to time. This amendment is aimed at eliminating the restriction of the value of portfolio that could be managed by investment advisors.

....Effective date will be 1st July 2022 ✓

Licensing Requirements

The Act has changed section 29 (1) (a) and increased the scope of persons who may be licensed by the Capital Markets Authority to include any legal entity that may be prescribed in the regulations. This change expands the scope of persons who could be licensed beyond companies and collective investment schemes. • In addition, the Act has amended section 29 (1) (c) by deleting the provision that required a business seeking licensing to have at least one director and at least one employee who is the chief executive of the applicant company to have satisfied the minimum qualification requirements. In its place, the Act has introduced a provision that requires at least the director, chief executive officer or such other person who directs, conducts, manages or supervises the business to have satisfied the minimum qualification requirements.

....Effective date will be 1st July 2022 ✓

PART 9: KENYA ROADS BOARD ACT

Changes To Kenya Road Board Activities

The Kenya Roads Board according to the change in the Act will allocate 50% of funds to development, rehabilitation and maintenance of the road network. The remaining 50% of allocated funds may be set aside by Board as security for borrowing funds necessary to finance maintenance, development and rehabilitation of roads. The Board is to obtain approval for this from the CS of the National Treasury.

....Effective date will be 1st July 2022 ✓

PART 10: BETTING , LOTTERIES & GAMING ACT

Horse Racing

The Act has amended the Betting, Lotteries and Gaming Act and excluded horse racing from the betting tax charged under Section 29A of the Betting, Lotteries and Gaming Act

....Effective date will be 1st July 2022 ✓

PARTS 7, 8, 9, 10, 11, 12 & 13: OTHER ACTS

PART 11: ROAD MAINTENANCE LEVY FUND ACT

Construction of Roads

The roads maintenance levy has been changed to now also fund roads approved by the National Assembly. Previously, the levy was only to be used for the Road Annuity Fund established under the Public Finance Management Act, 2012.

....Effective date will be 1st July 2022 ✓

PART 12: UNCLAIMED FINANCIAL ASSETS ACT

Waiver Of Penalties & Voluntary Disclosure Program

The Act has introduced the following changes to the Unclaimed Financial Assets Act:

- Providing that the penalties payable shall be recoverable as civil debts summarily and shall be capped to the value of the assets found to be reportable and deliverable;
- Introducing a new section that provides for waiver of penalties, fines and audit fees in part or in full where: The waiver is intended to facilitate the holder of the asset to disclose & deliver the undeclared asset to the Authority; In the opinion of the Authority, there is justifiable reasons to do so; or It is in the public interest to do so; and
- Introducing a new section that provides for a Voluntary Unclaimed Financial Assets Disclosure Programme. The Programme will run for 12 months and shall grant relief on penalties & interest relating to unclaimed assets where the holder discloses, reports or delivers the assets to the Authority in accordance with the section. Only assets held up to the 30th June 2022 shall be covered by the programme.

....Effective date will be 1st July 2022 ✓

PARTS 7, 8, 9, 10, 11, 12 & 13: OTHER ACTS

PART 13: STATUTORY INSTRUMENTS ACT

Automatic Revocation Of Statutory Instruments

The Act has now extended the automatic revocation period for statutory instruments issued under the Income Tax Act, the Stamp Duty Act, the Value Added Tax Act, Tax Appeal Tribunal Act, Excise Duty Act & the Tax Procedures Act for a period of 24 months with effect from 25 January 2023.

....Effective date will be 25th January 2023 ✓

Statutory Instruments Relating To Taxes, Levies Or Fees

The Act has been now changed to the time limit by the National Assembly to consider and either approve or reject statutory instruments which contain provisions dealing with taxes, levies/fees or any statutory instruments which have the effect of imposition of a charge on a public fund or variation or repeal of such charge to 28 days from the date of receipt of the notice.

....Effective date will be 1st July 2022 ✓

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