

# Unravelling the Finance Act 2021

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# Preamble

The Finance Act, 2021 (the Act) was assented into law by President Uhuru Kenyatta on 29 June 2021 and thereafter gazetted on 1 July 2021.

With the country reeling back from the effects of the Covid-19 pandemic, the Act has introduced a number of measures to shield Kenyans from these effects. Some of these measures are meant to reduce the cost of healthcare by reducing the Value Added Tax on certain medicaments and medical equipment. The Act has also introduced NHIF relief which will be a welcome move for employees and a positive step towards achieving the Universal Health Care goal of 2030. The limit for carry forward of corporation tax losses has been removed and the Commissioner can refrain from assessing taxes for any other reasons apart from the ones listed in Section 37 of the Tax Procedures Act.

Due to technological advancements and wider internet coverage the Government has sought to tap into this pot of gold by widening the scope of digital service tax.

The Act has also sought to align thin capitalization rules to the Organization for Economic Corporation and Development(OECD) Base Erosion profit shifting guidelines of moving from a ratio base to a percentage based on the Earnings Before Interest Tax and Depreciation & Amortization. The Introduction of country-by-country reporting for Multinational Enterprises also seeks to align Kenya with international standards.

We have analyzed for you in the ensuing pages of this document, the major amendments and the potential implications arising from the same.



# Income Tax Act



# Section 2: Amendment of definitions

The Finance Act, 2021 amends the following definitions to the Income Tax Act, Cap 470 (herein referred to as the “Income Tax Act”). Section 2 of the Income Tax Act specifically covers Definitions which work to provide clarity and guidance on the intention of the law. Where a definition is not explicitly provided for, in practice, the ordinary meaning from the Dictionary can guide the interpretation. The definition specifically highlights the significance being attached to the particular item in question.

## 1. Definition of Control

The definition of the term ‘control’ was previously deleted when the Second Schedule to the Income Tax Act (“ITA”) was repealed through the Tax Laws Amendment Bill, 2021. However, owing to the nature of this definition and its impact on several tax provisions, the Act has now re-introduced a more comprehensive definition for the term in relation to a person.

### **Control has been defined to include:**

- Direct or Indirect, holding of at least 20% of the voting rights in a company.
- Loan advanced by a person (lender) to another (borrower), that constitutes at least 70% of the book value of the total assets of the other person(borrower). This will however exclude loans from financial institutions that are not associated with the person advancing the loan.
- Provision of a guarantee for any form of indebtedness of another person (Principal Debtor) constitutes at least 70% of the total indebtedness of the other person (principal Debtor). This also excludes a guarantee from an independent financial institution.
- Power to appoint more than half of the board of directors of another person or at least one director or executive member of the governing board of that person.
- The person is the owner of or has the exclusive rights over the know-how, patent, copyright, trademark, license, franchise or any other business or commercial right of a similar nature, on which another person is wholly dependent for the manufacture or processing of goods or articles, or business carried on by the other person.
- Where the person or a person designated by that person:
  - Supplies at least 90% of purchases of another person; or
  - In the opinion of the Commissioner, influences the prices or other conditions relating to the supply of the purchases of another person.
- The person purchases or designates a person:
  - To purchases at least 90% of the sales of another person; or
  - In the opinion of the Commissioner, influences the price of any other condition of the sales of another person.
- The person has any other relationship, dealing or practice with another person that the Commissioner may deem to constitute control.

# Our View

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The re-introduction and revamping of this definition will bring more persons and businesses under the realm of the Kenya Revenue Authority (KRA) with regards to transactions with their related entities. Control equates to certain tax implications such as the requirement for transactions prices being determined at arm's length basis or influenced by the party's relationship.

It is important to appreciate that The Income Tax Act empowers KRA to adjust the profits of a resident person who carries on business in Kenya with a related non-resident person where the business is so arranged to produce to the resident person either no profits or less than ordinary profits.

In line with this anti-avoidance provision, the Finance Act 2006 introduced The Income Tax (Transfer Pricing) Rules to provide guidelines to be applied by related enterprises in determining the arm's length prices of goods and services. The Rules also provide administrative regulations including the types of records and documentation to be maintained by a person involved in transfer pricing arrangements thereby increasing the administrative burden of these entities.

Another key tax implication will arise in the case of deductibility of interest expenses such as those guided by the principles of Thin Capitalization. This is an area that again the Finance Act, 2021 has amended and is discussed in further detail in the ensuing pages of this document.





## 2. Definition of Infrastructure bond

This term will 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 system, or a communication network.

### Our View

The First Schedule to the Income Tax Act provides for income accrued in, derived from or received in Kenya which is exempt from tax.

Paragraph 60 specifically exempts

*“interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under Green Bonds Standards and Guidelines, and other social services: **Provided that such bonds, notes or securities shall have a maturity of at least three years.**”*

Furthermore, Section 15 (2) (x) of the Income Tax Act allows for the deductibility of

*“Expenditure of a capital nature incurred in that year of income, with the prior approval of the Minister, by a person on the construction of a public school, hospital, road or any similar kind of social infrastructure.”*

As evident from the above provisions, the taxman has always been lenient towards investments/expenditure incurred towards such projects. The introduction of this definition indicates the National Treasury's intention to source other avenues to raise funds for these projects.



### 3. Definition of Permanent Establishment

The concept of a permanent establishment is a global phenomenon that seeks to tax all income accrued in or derived from that specific jurisdiction. The Finance Act, 2021 amends to delete the existing definition of a permanent establishment as currently provided for in the Income Tax Act and overhaul it to encapsulate the following:

- a) Fixed place of business through which business is wholly or partly carried on and includes:
  - i) A place of management
  - ii) An office
  - iii) A factory
  - iv) A workshop
  - v) A mine
  - vi) An oil or gas well
  - vii) A quarry or any other place of extraction or exploitation of natural resources; A warehouse in relation to a person whose business is providing storage facilities to other, a farm, plantation, or other place where agricultural, forestry plantation or related activities are carried on and a sales outlet

## Our View

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The above definition has been amended from the existing definition to include part (ix) above. This provision therefore factors in the Agricultural sector that has, for many years, formed the backbone of Kenya's economy. According to a study conducted by Food and Agriculture Organization of the United Nations, Agriculture is contributing 26% of the Gross Domestic Product (GDP) and another 27% of GDP indirectly through linkages with other sectors. The sector employs more than 40% of the total population and more than 70% of Kenya's rural people. Bringing this sector into the tax net will be seen to boost revenue collections for the Exchequer.

- b) A building site, construction, assembly or installation project or any supervisory activity connected to the site of project, but only if it continues for a period of more than one hundred and eighty-three days. In calculation of the one hundred and eighty-three days one will factor in:
- i. where a person carries on activities at a place that constitutes a building site or construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed thirty days but do not exceed one hundred and eighty-three days, and
  - ii. connected activities are carried on at the same building site or construction or installation project during different periods of time, each exceeding thirty days, by one or more enterprises closely related to the first-mentioned enterprise, the different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site or construction or installation project.

## Our View

The concept of introducing the precise timelines provides more guidance on what will be constituted to form a permanent establishment considering such projects consist of a consortium of activities that can be carried out over a varied period of time. Previously the Act only provided for existence of the building site, or a construction or installation project for six months or more.

This amendment has come at a time when we have seen an increase in infrastructure projects mostly undertaken by non-residents directly or through other parties.





- c) The provision of services, including consultancy services, by a person through employees or other personnel engaged for that purpose, but only where the services or connected business in Kenya, continue for a period of, or periods exceeding in the aggregate, ninety-one days in any twelve - month period commencing or ending in the year of income concerned.

## Our View

This definition adds to the provisions that bring services into the ambit of taxation, now through the permanent establishment concept.

As currently provided for in the Act, one will be liable to taxation where the individual is considered resident for Kenyan tax purposes. This would apply if:

- He is present in Kenya for a period of more than 183 days (in aggregate) in the calendar year.
- He was present in Kenya for an average of 122 days or more per annum in a calendar year and the two preceding calendar years.
- He has a permanent home in Kenya and is present in Kenya for any period of time during the calendar year.

Another mechanism to tax such services is through the withholding tax system that requires one, upon remission of certain payments of, or on account of, any income which is subject to withholding tax, for residents and non-residents to deduct tax therefrom in line with the amount specified in the Income Tax Act.

This definition now expands the scope of taxation of such services.



- d) an installation or structure used in the exploration for natural resources:

Provided that the exploration continues for a period of not less than ninety-one days.

## Our View

The provision provides clarity in terms of the timeline of ninety-one days where the Income Tax Act was previously silent on the same. This will bring non-residents into the ambit of taxation.

## Our View

- e) a dependent agent of a person who acts on their behalf in respect of any activities which that person undertakes in Kenya including habitually concluding contracts or playing the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the person.

A dependent agent was also previously defined in the Income Tax Act, this definition only provides more clarity for the circumstances under which one will qualify as a dependent agent. Exclusions from Definition of dependent agent for purpose of Permanent Establishment.

It is also important to appreciate that the Act has excluded from the definition of permanent establishment the following activities where the activities are of a preparatory or auxiliary character:

- i. the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise.
- ii. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, or display.
- iii. the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise.
- iv. the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise.
- v. the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity; and
- vi. the maintenance of a fixed place of business solely for any combination of activities mentioned in paragraphs (i) to (v).

## Our View

This amendment redefines what constitutes a permanent establishment in line with international best practice under the OECD and UN Models, as well as the Base Erosion and Profit Shifting (“BEPS”) report.

Furthermore, this amendment removes areas of revenue leakages by foreign multinationals through tax evasion arrangements and also bring into tax net areas and sectors that were left out as a result of the law being outdated while the marketplace progressed.

### Effective Date

1st July 2021

## What changed

No changes from what was initially introduced in the Finance Bill 2021

# Section 3: Digital Service Tax

The Finance Act, 2021 amends to reduce the ambiguity of the digital service tax by clarifying that it is payable on incomes accruing from a business carried out over the internet or an electronic network including through a digital marketplace that enables users to sell or provide services, goods or other property to other users.

The Finance Act, 2021 amends to amend the applicability of Digital Service Tax to only cover non-resident persons transacting on this platform.

The Finance Act, 2021 also grants exemptions from Digital Service Tax to:

- Non-resident persons whose income has been charged subject to tax under the Withholding Tax Regime (Section 35 of the Income Tax Act); or
- Income of a non-resident person who carries on, in Kenya, the business of transmitting messages by cable, radio, optical fiber, television broadcasting, Very Small Aperture Terminal (VSAT), internet, satellite or by any other similar method of communication chargeable under Section 9 (2) of the Income Tax Act



## Our View

Taxation of the Digital economy was first introduced by the Finance Act, 2019. The Finance Act amended Section 3 (2) of the Income Tax Act to include taxation of income accruing from the digital marketplace. The Cabinet Secretary for the National Treasury later issued The Income Tax (Digital Service Tax (DST) Regulations, 2020 to guide taxation of this platform. With time, we should see further refinement being introduced to this tax regime.

Following the amendments, the tax will only be payable by non-resident persons who shall be required to submit a return and pay the tax due to the Commissioner on or before the twentieth day of the month following the end of the month in which the digital service was offered.

The digitalization of the economy has been a key focus of tax debates all over the globe in recent years. The purpose of taxes is to raise needed revenue, not to favor or punish specific industries, activities, and products. Some digital taxes work to create neutrality between digital business models and other businesses.

The proposal to exclude resident persons from digital service tax is a welcome relief to many Kenyans who carry online businesses and account for their taxes through other tax regimes e.g., turnover tax, corporate tax etc.

### Effective Date

1st July 2021

## What changed

No changes from what was initially introduced in the Finance Bill 2021

# Section 11: Trust Income & First Schedule – Income exempt from tax

The Law has in the past provided that apart from annuities paid free of tax, income paid out by a trustee to a beneficiary was deemed to be already taxed at the appropriate rate as per the Income Tax Act. The Finance Act, 2021 has now specified that in the case of a registered trust, the provision will only apply to:

- (a) any amount is paid out of the trust income on behalf of any beneficiary and is used exclusively for the purpose of education, medical treatment or early adulthood housing.
- (b) Income is paid to any beneficiary which is collectively below ten million shillings in the year of income.
- (c) Such other amount as the Commissioner may prescribe from time to time and at such rate as prescribed in paragraph 5 of the Third Schedule.

## Consequential amendments

- (i) The Finance Act, 2021 has included in the definition of “settlement” in relation to payments made to the settlor or the benefit of the child of the settlor being considered as income of the settlor and no one else. The provision states that, for transfer of assets, the term “settlement” will apply to those transferred through a registered family trust.
- (ii) Exemptions: The Finance Act, 2021 has exempted incomes from registered family trusts from income tax. The new provisions specify the following.
  - a) property, including investment shares, which is transferred or sold for the purpose of transferring the title or the proceeds into a registered family trust.
  - b) the income or principal sum of a registered family trust.
  - c) any capital gains relating to the transfer of title of immovable property to a family trust.
- (iii) The Finance Act, 2021 has introduced withholding tax at the rate of 25% in respect to the disbursement of deemed income to trustee beneficiaries of a registered trust that do not fall under the below category:
  - (a) any amount is paid out of the trust income on behalf of any beneficiary and is used exclusively for the purpose of education, medical treatment or early adulthood housing.
  - b) Income is paid to any beneficiary which is collectively below ten million shillings in the year of income.
  - c) Such other amount as the Commissioner may prescribe from time to time and at such rate as prescribed in paragraph 5 of the Third Schedule.

## Our View

This is a move to encourage creation of family trusts and further motivate investments through these family trusts. There is however need for further guidance through publication of Regulations on Registered Family Trusts.

**Effective Date**

1st July 2021

## What changed

This is a new introduction which was previously not factored in the Finance Bill, 2021.



## Section 12D: Minimum Tax

The Finance Act, 2021 has introduced a new section 12 D (1A) which outlines persons exempted from minimum tax. The Finance Act, 2021 has now expanded the scope of those exempt from minimum tax to include:

- i. A person who is engaged in manufacturing and that person's cumulative investment in the preceding four years from assent is at least ten billion shillings.
- ii. A person who is licensed under the Special Economic Zones Act, 2015; and
- iii. A person who is engaged in distribution business whose income is wholly based on a commission.

## Our View

Minimum tax was introduced through the Finance Act, 2020 with an aim to have all taxpayers contribute to the Exchequer and consequently for the infrastructure and other Government services utilized by all Kenyans. While the intention as set out by the Cabinet Secretary in his Budget speech inclined towards loss making entities, this tax is set to affect all taxpayers including entities that are in taxable profit positions.

More debates and analysis of this new tax law have uncovered the need for special considerations/ exclusions for certain sectors or businesses. Considering the key role that the investors in the special economic zones and in the manufacturing sector play, which are the key backbone of our economy, we welcome these exemptions from this minimum tax.

In particular, as for the investors in the special economic zones, the Third Schedule to the Income Tax Act provides that SEZ developers, operators and enterprises shall be subject to income tax on their income at the corporate tax rate of ten per cent (10%) for the first ten (10) years of operation, and thereafter fifteen per cent (15%) for the next ten (10) years of operation. This is obviously advantageous compared to the usual tax on income of companies at the corporate tax rate of thirty per cent (30%).

It is therefore safe to assume that these players invested in these special economic zones fully aware that they are to reap certain tax benefits. It is very evident that the effect of the above incentive will be negated where minimum tax is still due and payable by these players. Setting up in a special economic zone comes with additional expenses as one has to invest in the infrastructure and develop the area. This cost must be compensated in one way or another.

### Effective Date

1st July 2021

## What changed

This is a new introduction which was previously not factored in the Finance Bill, 2021.

# Section 15: Tax losses to be carried forward Indefinitely

The Finance Act, 2021 amends the allowability to carry forward the tax losses indefinitely until the loss is fully extinguished. The loss will be an allowable deduction when ascertaining total taxable income in subsequent years of income.

## Our View

This is a welcome move, considering that in some instances, a taxpayer could be in a tax loss position owing to the fact that he has been granted capital allowances and he is not able to utilize them in the period granted. It is worthwhile to note that entities in a tax loss position would still be subjected to minimum tax. (The High Court on 19th April 2021 issued conservatory orders temporarily suspending Kenya Revenue Authority's (KRA) implementation of minimum tax pending the hearing and determination of the petition.)

The amendment is however not clear on whether this will apply to prior year losses or losses generated before the effective date of 1 July 2021.

### Effective Date

1st July 2021

## What changed

No changes from what was initially introduced in the Finance Bill 2021



# Section 16: Non-Allowable Deductions – Interest Restriction

Thin capitalization is relevant where a company is controlled by non-resident persons, and it is highly geared. Under the current provisions of the Kenyan Income Tax Act, a company is thinly capitalized if:

- The highest amount of all loans (on which interest is paid) held at any time during the year exceeds three times the sum of the revenue reserves (including negative reserves) and paid-up capital of all classes of shares of the company; and
- The company is under the control of a non-resident person alone or together with four or fewer other persons.

As highlighted in the earlier sections of this advisory note, the definition of “control” has now been revised to factor in more conditions under which control would be construed to apply. This brings into the ambit of thin capitalization, more scenarios under which interest restriction would be triggered.

It is also important to note that the Finance Act, 2021 proposes to additionally amend interest restriction rules as follows:

A company will be deemed to be thinly capitalized where, “gross interest paid or payable to related persons and third parties in excess of thirty per cent of earnings before interest, taxes, depreciation and amortization of the borrower in any financial year:

**Provided that:**

any income which is exempt from tax shall be excluded from the calculation of earnings before interest, taxes, depreciation and amortization; and this paragraph shall apply to—

- (A) interest on all loans.
- (B) payments that are economically equivalent to interest; and
- (C) expenses incurred in connection with raising the finance.

The Finance Act, 2021 now excludes banks or financial institutions licensed under the Banking Act; and micro and small enterprises registered under the Micro and Small Enterprises Act, 2012.

It imperative to acknowledge that where no interest is charged, an amount of deemed interest where the person is controlled by a non-resident will also be disallowable for tax purposes.

## Our View

Thin capitalization has always been a tool that the taxman utilizes to ensure that repatriation of profits is not done out of untaxed incomes. The strictness of the proposed measure highlights the advancements in trading that have developed over the years leading to losses in revenue for the respective jurisdictions. This will call for investors to redesign their potential structures in the country with more share capital outlays as opposed to reliance on debt structuring. It also may be an avenue to attract foreign direct investment in the country.

### Effective Date

1st January 2022

## What changed

The Finance Act, 2021 introduces certain exemptions from this provision.

# Section 18: Returns on activities in other jurisdictions

The Finance Act, 2021 introduces Country by Country Reporting (“CbCR”) which is a form of reporting by multinational enterprises initiated by the Organization for Economic Co-operation and Development (OECD) in the Base Erosion and Profit Shifting (BEPS) Action 13 Report. It is in line with this that the Finance Act, 2021 introduces the following definitions:

**“Multinational enterprise group”** means a group that includes two or more enterprises which are resident in different jurisdictions including an enterprise that carries on business through a permanent establishment or through any other entity in another jurisdiction; and

**“Ultimate parent entity”** means an entity that:

- (a) is resident in Kenya for tax purposes.
- (b) is not controlled by another entity; and
- (c) owns or controls a multinational enterprise group.

An ultimate parent entity of a multinational enterprise group (both as defined above) will be required to submit to the Commissioner a return describing the group’s financial activities in Kenya, where its gross turnover exceeds the prescribed threshold, and in all other jurisdictions where the group has taxable presence, not later than twelve months after the last day of the reporting financial year of the group.

The return shall contain the prescribed information on the group’s aggregate information including information relating to the amount of revenue, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the group operates.

## Our View

The CbCR report will provide the Kenya Revenue Authority visibility of turnover, other income, capital investments, retained earnings, tangible assets, tax obligations settled and or accrued, amongst other details for these entities. This is a concept adopted globally by members of the OECD and will facilitate transparency for matters pertaining transfer pricing and other base erosion and profit shifting related risks arising from multinational entities operating in multiple jurisdictions.

It is important that the prescribed threshold is gazetted immediately this provision is enacted into law.

<b>Effective Date</b>	1st January 2022
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## What changed

No changes from what was initially introduced in the Finance Bill 2021



# Section 41: Special arrangements for relief from double taxation

The Cabinet Secretary “may from time to time by notice declare that arrangements, specified in the notice and being arrangements that have been made with the government of any country with a view to affording relief from double taxation in relation to income tax and other taxes of a similar character imposed by the laws of the country.”

Where an arrangement made under this section provides that income derived from Kenya is exempt or excluded from tax, or the application of the arrangement results in a reduction in the rate of Kenyan tax, the benefit of that exemption, exclusion, or reduction shall not be available to a person who, for the purposes of the arrangement, is a resident of the other contracting state if fifty per cent or more of the underlying ownership of that person is held by an individual or individuals who are not residents of that other contracting state for the purposes of the agreement. However, these restrictions do not apply if the resident of the other contracting state is a company listed in a stock exchange in that other contracting state.

In addition, the Act amends the provisions relating to double taxation agreements/arrangements in order to be considered in accordance with the Treaty Making and Ratification Act, 2012 and not the Statutory Instruments Act, 2013.

Consequential amendments have been made in section 41A to align to the amendments in section 41 by deleting the words “specified in the notice being arrangement”.

## Our View

The amendment will see the benefit from tax exemption not available to entities of the other contracting state where the shareholding by both individual and artificial persons of more than fifty percent is in the hands of non-residents of that other contracting state. Before this amendment it is only where the shareholding of the entity in the other contracting state was of more than fifty per cent in the hands of non-resident individuals that the benefit of tax exemption was denied. This amendment now brings equity and removes discrimination that existed against entities with individuals as shareholders with more than fifty percent being held by non-residents of other contracting state. This is intended to discourage treaty shopping by multinational enterprises.

This amendment is also meant to align and streamline the recognition of DTAs and other arrangements in line with the Treaty Making and Ratification Act.

<b>Effective Date</b>	1st July 2021
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## What changed

It is imperative to appreciate that the prior requirement for Parliamentary approval of Double Tax agreements with Foreign Governments as covered in the Income Tax Act has now been repealed through the Finance Act, 2021. However, a similar provision in the Treaty Making & Ratification Act, 2012 still upholds this requirement.

# Section 133: Repeals and Transitional Provisions

## a) Extension of transitional period on capital expenditure for bulk handling facilities supporting SGR

The Business Laws (Amendment) Act 2020 introduced investment deduction of 150% where a person incurs capital expenditure of at least KES 5 Billion on the construction of bulk storage and handling facilities for supporting the Standard Gauge Railway (SGR) operations. The said facilities must have a minimum storage capacity of 100,000 metric tonnes of supplies.

The Tax Laws (Amendment) Act 2020 provided a transitional provision under Section 133 upon repeal and replacement of the Second Schedule that it shall continue to be in force until 31st December 2021. The Act has therefore extended the transitional period for a further one year to 31st December 2022.

## Our View

It can be well assumed that an investor incurring capital expenditure of at least five billion shillings on the construction of bulk storage and handling facilities for a minimum storage of one hundred thousand metric tonnes of supplies would not have achieved to do so in such a short time frame. The decision to make such an investment would also need more time and without the lack of this incentive the uptake would have definitely been debatable. The extended time frame will allow investors in the field ample time to complete their projects as envisaged by the tax incentive.

It is also imperative to note that COVID 19 disrupted any activities undertaken and not only were investment decisions in this area put on hold, but all investments decisions of any nature were put on hold as the world economy was unstable. Now that activities have slowly begun resuming, we agree that the timeline of 31st December 2021 would not be sufficient for any investors to undertake this project as they are likely not to complete the project within this timeframe and hence benefit from the same until they first put the facilities to use.

Such storage facilities are critical to the success of the SGR, and the significant investments being made at the port of Mombasa and Lamu. The LAPSET Corridor Program is part of the Kenya Vision 2030 Strategy which is the national long-term development policy that aims to transform Kenya into a newly industrializing, middle-income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment. The Vision comprises of three key pillars: Economic; Social; and Political. The Economic Pillar aims to achieve an average economic growth rate of 10 per cent per annum and sustaining the same beyond 2030. Such public private partnerships are critical to the success of achieving this economic growth.

## b) New sub-section (7) – straight-line application on written down values of investment allowance

The Act amends section 133 to include a transitional provision on treatment of any written down values due to the change in the application of investment allowance from reducing balance to a straight-line basis.

This is meant to clarify that any investment allowance as at the date of commencement of the Act (1st July 2021) shall be claimed on a straight-line basis.

## Our View

This amendments provides clarity on treatment of residual balances brought forward in respect of capital allowances that were repealed earlier through the Tax Laws (Amendment) Act, 2020.

<b>Effective Date</b>	1st July 2021
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## What changed

This a new amendment introduced in the Finance Act, 2021.

## Second Schedule –

# Investment Deduction Allowances

The Finance Act, 2021 amends the second schedule to the Income tax Act as follows:

- (a) Capital allowances to be claimed using straight line method.
- (b) Removal of the requirement of having a mining right for an investor to claim capital allowances on machinery used to undertake mining operation.
- (c) Amend the definition of “manufacture” to expand the scope of electricity generation and distribution qualifying for investment allowance to any generation and distribution of electricity as opposed to limiting it to just electricity generated for supply and distribution through the national grid.
- (d) Expansion of the definition of Civil works to include:
  - Roads and parking areas
  - Railway lines and related structures
  - Water, industrial effluent, and sewerage works
  - Communications and electrical posts and pylons and other electrical supply works and
  - Security walls and fencing
- e) Provide for the definition of “farm works” to mean farmhouses, labour quarters, any other immovable building necessary for the proper operation of the farm, fences, dips, drains, water and electricity supply works, other works necessary for the proper operation of the farm.
- f) Investment Deduction to be 100% where:
  - The cumulative investment value in the preceding three years outside Nairobi City County and Mombasa County is at least two billion shillings.  
Provided that where the cumulative value of investment for the preceding three years of income was two billion shillings on or before the 25th of April 2020, and the applicable rate of investment deduction was one hundred and fifty per cent, that rate shall continue to apply for the investment made on or before the 25th April, 2020.
  - The investment value outside Nairobi City County and Mombasa County in that year of income is at least two hundred and fifty million shillings; or
  - The person has incurred investment in a special economic zone.

# Our View

One of the key strategies for any Government to build its economy is to encourage investment, both local and foreign. One such incentive was introduced through the Finance Act, 2009 that provided for deduction of capital expenditure incurred on the construction of a building or purchase and installation of machinery outside the City of Nairobi or the Municipalities of Mombasa or Kisumu whereof the value of the investment is not less than two hundred million shillings.

This was a positive move that saw significant urban - rural migration further enhancing the rural markets through creation of more opportunities and decongesting the urban markets. However, the Tax Laws (Amendment) Act, 2020 that took effect in April 2020 clawed back this incentive leaving the investment deduction allowance at a rate of 50 % in the first year of use and the residual value at the rate of 25% per year on reducing balance across the spectrum.

This amendment took away the stimulus that would ideally spur growth outside the urban areas. It is understandable that the infrastructure is already developed in these major cities and hence no investor would be keen to move to a less developed area that would only work to increase its costs of operation unless there is an incentive that assists to drive these costs down.

It is important to appreciate that large scale manufacturers devoted significant resources to major projects situated outside these satellite towns and now looking to expand and grow your operations. As such, tax incentives like the 150% investment deduction could provide significant tax savings allowing the same to be reinvested in the various plants.

We highly commend the additional amendment to this provision introducing the enhanced rate of investment deduction of 100% allowance.

It is important to recognize that projects of this magnitude are usually undertaken for a longer period of time. Construction of significant projects must have started in the earlier periods with these manufacturers budgeting with this tax incentive. It would be unfair to deny them of the same abruptly and as such we highly commend this to reinstate the same for the big players who have invested significantly. This will encourage them to continue growing their industries and also growing the vicinity they operate in.

On the same note, we also commend the effort to encourage investment schemes operationalized by the Government. Special economic zones are a clear evidence of the benefit that public- private partnerships can yield. Most of these zones are designated outside the satellite cities thereby:

- Creating significant forward and backward linkages thereby providing a platform for several players of the economy;
- Developing the infrastructure and other social amenities in those areas;
- Development of Agro based industries which is a key source of income in our country;
- Development of infrastructure based industries such as steel, cement etc.;
- Transfer of technology and knowledge through labour;
- Assist in decongestion of urban areas;
- Assist with creation of employment opportunities; and
- Assist with reduction of the infrastructure strain currently experienced in the urban areas; amongst others.

As evident, we must encourage the manufacturers and investors in the special economic zones through provision of such tax incentives.

**Effective Date**

1st January 2022

## What changed

The Finance Act, 2021 introduced additional investment deduction allowances for manufacturers and investors in the special economic zones.



# Ninth Schedule – Extractive Industries

Paragraph 4(3) and Paragraph 9(3) of the Ninth Schedule to the Income Tax Act is amended to align the rate of depreciation for machinery first used to undertake exploration operations under a prospecting right or undertake exploration operations to the rates provided in the Second Schedule to the Income Tax Act which is 50% in the first year of use and the balance to be claimed on an equal instalment basis.

The Finance Act also seeks to:

- To amend the rate of non-resident withholding tax for both service fee paid by the contractor and a licensee from a previous rate of 5.625 percent (5.625%) to ten percent (10%). *{Effective date 1st July 2021}*
- The rate of withholding tax to be deducted by a contractor in the case of management, training or professional fees to be revised downwards to ten percent (10%) from twelve and a half percent (12.5%). *{Effective date 1st July 2021}*
- To align the deductibility of interest expense to 30% of EBITDA.

The Finance Act, 2021 also proposes to amend paragraph 18 of the Ninth Schedule by making the deductibility of interest of thinly capitalized contractors subject to Section 16(2) j.  
*(Effective Date: 1st January 2022)*

Previously the deductibility of interest for contractors was based on the amount by which all loans held by the company at any time exceeded two times the sum of revenue reserves and issued and paid-up capital of all classes.

## Our View

Some of the amendments can be seen to be aligning provisions provided earlier in respect of capital allowances and interest restriction. The change in withholding tax rates seems to be an intentional move creating opportunities for re-characterization of payments to take advantage of the lower rate.

## What changed

No changes from what was initially introduced in the Finance Bill 2021.



# Value Added Tax



## Section 2: Supply of Imported Services

The Finance Act, 2021 amends the existing definition of “*supply of imported services*” as follows:

**Old Position**– “(c) the registered person would not have been entitled to a credit for the full amount of input tax payable if the services had been acquired by the person in a taxable supply.”

**New Position**– “(c) in the case of a registered person, the person would not have been entitled to a full amount of input tax payable if the services had been acquired by that person in a taxable supply.”

## Our View

We interpret the above to mean that where one is entitled for full claim of input tax on these imported services then they will not be required to account for VAT on imported services.

The Finance Act, 2021 tries to provide clarity on the meaning of the term. Despite this attempt, from our interpretation, the wordings are still rather ambiguous. We however want to believe that the idea is to provide relief to a registered person who is entitled, to fully claim input VAT on the supplies for a tax period.

Consequently the Act has deleted the word “registered” and “a registered person” from section 10 (1) & (2) of the VAT Act to align with the changes of the Finance Act, 2019 which provided for taxation on imported services to any person (registered and non-registered). This makes it compulsory for both registered and non-registered person to account for VAT on imported services where applicable. The law as currently drafted would limit this only to registered persons.

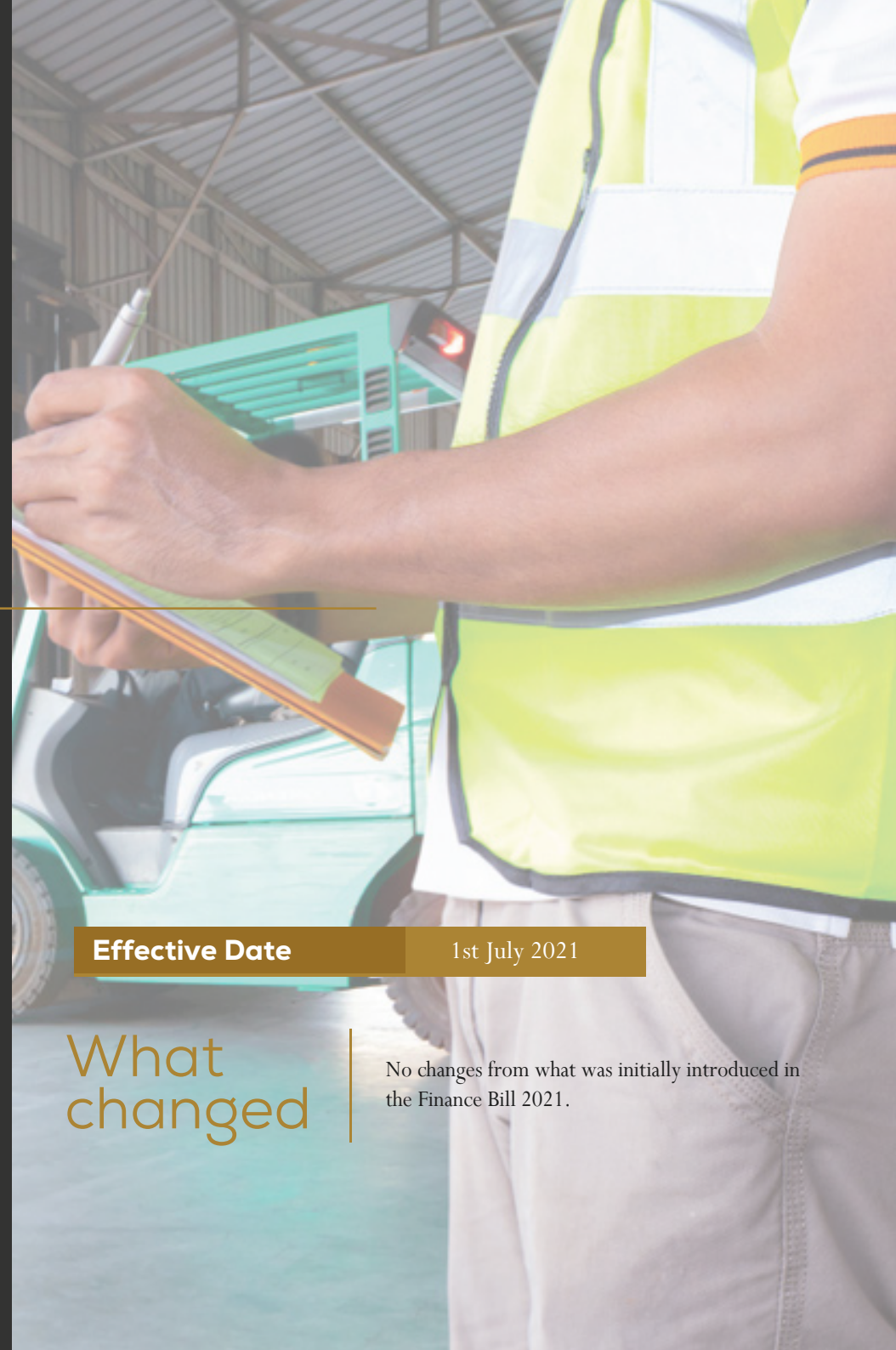
The word “registered” has also been deleted to allow unregistered persons to be eligible for deferment of payment of tax due in section 19 (2). This amendment makes persons legible for deferment of tax payment under section 19(2) which previously was only available to registered persons. It makes it clear the due dates on which VAT is payable by both registered and unregistered persons.

**Effective Date**

1st July 2021

## What changed

No changes from what was initially introduced in the Finance Bill 2021.



## Section 5: Digital Market Place

The Finance Act, 2021 seeks to clarify and expand the meaning of digital marketplace by clearly outlining its definition and what it constitutes. The previous Act was vague, making it open to more than one interpretation hence the amendment.

Under the new Act, a digital marketplace is defined as an online platform that enables users to sell or provide services, goods or other property to other users. The Bill further seeks to include supplies made over the internet or electronic network and online platform which enables users to sell or provide services, goods or other property to other users in the meaning of a digital marketplace.

### Our View

This implies that all companies and individuals who do business over the internet and e-commerce platforms will have to account for VAT on the same.

#### Effective Date

1st July 2021

### What changed

No changes from what was initially introduced in the Finance Bill 2021.





# Section 17: Credit for Input tax against Output Tax

The Finance Act, 2021 amends Section 17 of the VAT Act which currently restricts deductibility of input tax to the provisions of that section only. The Act amends this narrow restriction to allow other provisions of the Act to be considered in determining input tax allowable. It also seeks to expand the restrictions on claimable input VAT by including leased or hired passenger cars or minibuses and any associated repairs and maintenance expenses.

## Our View

This amendment means that before claiming input tax, consideration must be given to section 17 and other provisions of the Act. The current wording of section 17 indicates like other provisions of the Act are excluded.

By including the leasing and hiring services of passenger cars or minibuses, entertainment, restaurant and accommodation services in the prohibition list, blocks input VAT from being claimable translating to additional costs for the taxpayers and increased revenues for the Treasury.

### Effective Date

1st July 2021

## What changed

No changes from what was initially introduced in the Finance Bill 2021.





# First Schedule to the Value Added Tax (VAT) Act, 2013

Effective Date: 1st July 2021



**(a) Part I – exempt goods:** \_\_\_\_\_

- (i) The following exempt goods which were in some cases duplicated and in some, misclassified in the second schedule of the VAT Act have now been cleaned up. They retain their VAT exempt status with the following tariff codes:

OLD DESCRIPTION	NEW DESCRIPTION
Disposable plastic syringes of tariff No. 9018.31.10	Syringes, with or without needles of tariff no. 9018.31.00.
Other syringes with or without needles of tariff No. 9018.31.90	
3001.90.10 Heparin and its salts.	3001.90.00 Other - Heparin and its salts
3001.90.90 -Other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified,or included	3001.90.00 Other - Other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified, or included
3002.10.00 - Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes	3002.12.00 Antisera and other blood fractions
	3002.13.00 Immunological products unmixed, not put up in measured doses or in forms or packings for retail sale
	3002.15.00 Immunological products put up in measured doses or in forms or packings for retail sale
	3002.19.00 Other -Antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes
Super absorbent polymer (SAP) of tariff number 39.06.90.0	Super absorbent polymer (SAP) of tariff number 3906.90.00
IP super soft fluff pulp - fr-fluff 310 treated pulp 488*125mm (cellose) of tariff number 4703.21.0	IP super soft fluff pulp- for-fluff 310 treated pulp 488*125mm (cellulose) of tariff number 4703.21.00
Perforated PE film 15-22 gsm of tariff number 3921.190.0	Perforated PE film 15-22 gsm of tariff number 3921.90.00
Spunbound non-woven 15-25 gsm of tariff number 56.03.1190.8	Spun bound non-woven 15-25gsm of tariff number 5603.11.00
Airlid paper with super absorbent polymer 180gsm/67 of tariff number 48.03.00.0	Airlid paper with super absorbent polymer 180gsm/67 of tariff number 4803.00.00
Airlid paper with super absorbent polymer 80gsm/67 of tariff number 48.03.00.0	Airlid paper with super absorbent polymer 80gsm/67 of tariff number 4803.00.00
Pressure sensitive adhesive of tariff number 3506.91.90	Pressure sensitive adhesive of tariff number 3506.91.00
Plain polythene film/LPDE of tariff number 39.21.190.0	Plain polythene film/LPDE of tariff number 3921.19.10
Plain polythene film/PE of tariff number 39.21.190.0	Plain polythene film/PE of tariff number 3921.19.10
PE white 25-40gsm/release paper of tariff number 48.44.51.10.0.	PE white 25-40gsm/release paper of tariff number 4811.49.00

DESCRIPTION	OLD RATE	NEW RATE
Taxable goods, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration by a company granted a prospecting or exploration license in accordance with the Energy Act, 2019, production sharing contracts in accordance with the Petroleum Act, 2019, or a mining license in accordance with the Mining Act, 2016, upon recommendation by the Cabinet Secretary responsible for matters relating to energy, the Cabinet Secretary responsible for matters relating to petroleum, or the Cabinet Secretary responsible for matters relating to mining, as the case may be.	16%	Exempt
Specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters and deep cycle batteries that use or store solar power, upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy.	16%	Exempt
Taxable goods supplied to persons that had an agreement or contract with the Government prior to 25th April 2020 and the agreement or contract provided for exemption from value added tax: Provided that this exemption shall apply to the unexpired period of the contract or agreement and upon recommendation by the Cabinet Secretary responsible for matters relating to energy.	16%	Exempt
Medical ventilators and the inputs for the manufacture of medical ventilators upon recommendation by the Cabinet Secretary responsible for matters relating to health.	16%	Exempt
Physiotherapy accessories, treadmills for cardiology therapy and treatment of tariff number 9506.91.00 for use by licensed hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.	16%	Exempt
Dexpanthenol of tariff number 3304.99.00 used for medical nappy rash treatment by licensed hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.	16%	Exempt
Medicaments of tariff numbers 3003.41.00, 3003.42.00, 3003.43.00, 3003.49.00, 3003.60.00 (excluding goods of heading 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses	16%	Exempt
Diagnostic or laboratory reagents, of tariff number 3822.00.00 on a backing, prepared diagnostic or laboratory reagent whether or not on a backing, other than those of heading 30.02 or 30.06, certified reference materials upon approval by the Cabinet Secretary responsible for matters relating to health.	16%	Exempt
Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, 9018.20.00, 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.	16%	Exempt
Other instruments and appliances, of tariff number 9018.41.00, 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 responsible for matters relating to health.	16%	Exempt
Other instruments and appliances, including surgical blades, of tariff number 9018.49.00, 9018.50.00 9018.90.00 used in dental sciences upon approval by the Cabinet Secretary responsible for matters relating to health.	16%	Exempt
Ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus upon approval by the Cabinet Secretary responsible for matters relating to health	16%	Exempt
Other breathing appliances and gas masks, excluding protective masks having neither mechanical parts nor replaceable filters upon approval by the Cabinet Secretary responsible for matters relating to health.	16%	Exempt
Artificial teeth and dental fittings of tariff numbers 9021.21.00, 9021.29.00 and artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.	16%	Exempt
Apparatus based on the use of x-rays, whether or not for medical, surgical or dental of tariff numbers 9022.12.00, 9022.13.00, 9022.14.00 and 9022.19.00 upon approval by the Cabinet Secretary responsible for matters relating to health.	16%	Exempt
Apparatus based on the use of alpha, beta or gamma radiations, whether or not for medical, surgical or dental of tariff numbers 9022.21.00, 9022.29.00, 9022.30.00 and 9022.90.00, upon approval by the Cabinet Secretary responsible for matters relating to health.	16%	Exempt

DESCRIPTION	OLD RATE	NEW RATE
Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, of tariff number 8523.80.10, including matrices and masters for the production of discs, but excluding products of Chapter 37; software upon approval by the Cabinet Secretary responsible for matters relating to health.	16%	Exempt
Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.31.00, including weight operated counting or checking machines; weighing machine weights of all kinds upon approval by the Cabinet Secretary responsible for matters relating to health.	16%	Exempt
Fetal Doppler-Pocket (Wgd-002) Pc and pulse oximeter-finger held (Gima brand) Pc of tariff number 9018.19.00 upon approval by the Cabinet Secretary responsible for matters relating to health.	16%	Exempt
Sterilizer Dry Heat (Wgd-001-Grx-05A) Pc, autoclave steam tabletops of tariff number 8419.20.00 upon approval by the Cabinet Secretary responsible for matters relating to health.	16%	Exempt
Needle holders and urine bags, of tariff heading 3926	16%	Exempt
Tourniquets of tariff number 3926.90.99 for use by licensed hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.	16%	Exempt
The transfer of assets and other transactions related to the transfer of assets into real estate investment trusts and asset-backed securities.	16%	Exempt
Taxable supplies including fish feeding and handling, water operations, cold storage, fish cages, pond construction and maintenance, and fish processing and handling, imported or purchased for direct and exclusive use on the recommendation of the relevant state department	16%	Exempt
Pre-fabricated biogas digesters	16%	Exempt
Biogas	16%	Exempt
Sustainable fuel briquettes for household and commercial use.	16%	Exempt
The supply of denatured ethanol of tariff number 2207.20.00.	16%	Exempt
Tractors other than road tractors for semitrailers.	16%	Exempt





The background of the slide features a wooden house-shaped tag with a hole at the top, resting on a financial document. To the right of the tag is a black calculator with teal and grey buttons. In the foreground, there are several coins (including a 1 Euro coin) and a silver pen. The financial document has various numbers and a bar chart with blue and orange bars.

### (a) Part II - Exempt Services

- (i) Paragraph 18A on transportation of sugarcane from farms to milling factories has been deleted and moved to the zero-rating schedule.
- (ii) The following have been added to the list of exempt services:
  - The exportation of taxable services.
  - The transfer of assets and other transactions related to the transfer of Assets into real estate investment trust and asset-backed securities.

Effective Date: 1st July 2021

# Second Schedule: Zero Rating

**Effective Date: 1st July 2021**

- (i) Deletion of paragraph 1 of part A - Exportation of taxable services.
- (ii) The following have been zero rated – additions to the Second Schedule:
  - 1) The Transportation of goods originating from Kenya to a place outside Kenya.
  - 2) Transportation of sugarcane from farms to milling factories.
  - 3) The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten per-cent in weight.

## Our View

The Finance Bill, 2021 proposed deletion of Section 13A to the Second Schedule of the Value Added Tax Act, 2013, that provided for zero rated supplies which covered the supply of ordinary bread. This would translate to bread being taxed at the standard rate of 16%.

Bread is considered as a basic commodity by Kenyans and is largely consumed as a staple food by persons who can be categorized as living within the poverty level. Kenya is ranked the third poorest lower-middle-income country globally in a new study released by the World Bank. The World Bank State of Economic Inclusion Report 2021 has shown that more than forty per cent of Kenyans currently live in extreme poverty.

The minimum wage for a general labourer including cleaner, sweeper, gardener, children's ayah, house servant, day watchman, messenger is currently set at KES 7,240.95 in certain areas. This translates to a daily income of roughly KES 241. As such, ordinary bread is one of the cheapest food commodities that a large portion of Kenyans rely upon to feed themselves and their families, currently retailing at between KES 50 and KES 55 per 400 grams loaf. Despite this, it is fair to say majority of Kenyans are barely even able to afford this. It is therefore commendable that this move was reconsidered and bread zero rated as was the

case earlier. In addition, the earlier provision of having ordinary bread exempted in the first schedule was equally deleted.

Nairobi currently enjoys the privileges that come with being the regional hub for most of the African market. Most multinational companies have been using Kenya as a launching pad of their ventures into the African markets due to the added benefits that Kenya has to offer. Our affiliations to the developed countries and local set up of prominent world organizations like the United Nations, presence of a high number of international embassies are some of the factors that have always placed Kenya at a higher level than our neighbours. Kenya then acts as a distribution and logistics hub from where all these commodities are transported and supplied to other African countries. The Northern Corridor is a busy and an important transport route to the East and Central Africa countries of Burundi, Eastern DR Congo, Kenya, Rwanda, South Sudan and Uganda. The main Northern Corridor transport network is connected to our Port of Mombasa and includes a road network and railways belonging to Kenya Railways Corporation. This just goes to emphasize the strategic role we play as a country in the region.

A quick online search from the Observatory of Economic Complexity which is a platform providing international trade data states that in 2019 Kenya was the number 63 economy in the world in terms of GDP (current US\$) and number 107 in total exports. As per the same source, the top exports of Kenya are Tea (\$1.13B), Cut Flowers (\$616M), Refined Petroleum (\$404M), Coffee (\$224M), and Titanium Ore (\$143M).

The key data to highlight is that the source states that Uganda is listed as Kenya's number one export country (\$619M). It is very clear the mode of transportation that these exports are conducted with. In 2019, Kenya exported a total of \$6.25B, making it the number 107 exporter in the world. During the last five reported years the exports of Kenya have changed by \$13.6M from \$6.24B in 2014 to \$6.25B in 2019. It is very important to appreciate the quantum of exports these transporters facilitate and hence we commend the move to exclude the services provided by these transporters.

# The Excise Duty Act, 2015



## Section 2 – Definitions

The Finance Act, 2021 introduces the following new definitions to Section 2 of the Excise Duty Act, 2015.

### Defining “Compound”

This term has been assigned the meaning as per its definition in Section 2 of the Compounding of Potable Spirits Act. It is defined as to mean “communicate any flavor to, or to mix any ingredient or material with, spirits, but not so as to denature the spirits.”

## Our View

This amendment is meant to provide clarity for purposes of control of potable spirits in respect of licensing and manufacture of excisable spirits.

### Defining “Possession”

The term is defined to mean “*having, owning, or controlling any excisable goods including:*

- *having in one’s possession any excisable goods’*
- *knowingly having any excisable goods in the actual possession or custody of any other person.*
- *having any excisable goods in any place, whether belonging to or occupied by oneself or not, for the use or benefit of oneself; or*
- *having any excisable goods for the use or benefit of another person.*

*provided that if there are two or more persons and any of them with the knowledge or consent of the others has any excisable goods in his custody or possession, such goods shall be deemed to be in the custody and possession of all of them.”*

## Our View

The Finance Act, 2021 has provided clarity in respect of possession to include not physical possession of excisable products but also ownership and control of the same. This means that actual owners or persons who have non complaint excisable goods will be obligated to account for the same.

### Effective Date

1st July 2021

## What changed

No changes from what was initially introduced in the Finance Bill 2021.



# Section 7 – Remission of Excise Duty

The Finance Act, 2021 introduces a requirement for the Cabinet Secretary to lay before the National Assembly a notice granting remission of excise duty, wholly or partially, in respect of beer or wine made from sorghum, millet or cassava or any other agricultural products, (excluding barley), grown in Kenya. The same must be laid before the National Assembly without unreasonable delay, and a resolution may be passed by the National Assembly within twenty-one days on which it next sits after the notice is so laid.

## Our View

This is to align to the current practice where the Cabinet Secretary is required to lay before the National Assembly a gazette notice providing for remission of excise duty for consideration as per the Statutory Instruments Act, 2013.

### Effective Date

1st July 2021

## What changed

No changes from what was initially introduced in the Finance Bill 2021.





# Section 14 – Rebate on Excise Duty on Bulk Data

The Finance Act, 2021 grants licensed persons who have paid excise duty in respect of bulk purchases of internet data for resale purposes to offset the duty paid against the excise duty payable by that person on internet data services supplied to the final consumer.

## Our View

This amendment provides relief to bulk internet data service providers by allowing them to offset excise duty paid. This will translate into the service providers avoiding the double taxation they were exposed to earlier and offer them a relief.

This will reduce the cost of data bundles thereby encouraging online businesses and creativity. It will also encourage firms to take up investment in the supply of internet across the country.

### Effective Date

1st July 2021

## What changed

No changes from what was initially introduced in the Finance Bill 2021.



# CHANGE IN STATUS

The Finance Act, 2021 has made several amendments to the First Schedule to the Excise Duty Act, 2015 as follows-

## A. Excisable Goods. Effective 1st July 2021

Description	Old rate	New rate
Imported sugar confectionery of tariff heading 17.04	KES 20 per Kg	KES 35 per Kg
Locally manufactured white chocolate, chocolate in blocks, slabs, or bars of tariff numbers 1806.31.00, 1806.32.00, 1806.90.00	N/A	KES 209.88 per Kg
Imported glass bottles (excluding imported glass bottles for packaging of pharmaceutical products)	25%	25%
Provided that it shall not apply to glass bottles imported from any of the countries within the East African Community	25%	Exempt from Excise Duty

## Our View

### Confectionary & Chocolates

The Finance Act, 2021 imposes excise duty on both locally manufactured and imported confectionary and chocolates where previously this only applied to imported products. This would be an additional cost which will negatively impact the consumption of these products. It will expose local manufacturers to unfair trade practices emanating from countries that the said goods are imported from. This is an indictment on the country for its failure to implement the Trade Remedies Act that will have cushioned Kenyan manufacturers from goods that enjoy subsidies.

### Imported Glass Bottles

The Finance Bill, 2021 proposed to delete imported glass from the Excise Duty Act. This deletion would have had a negative impact on Kenyan glass bottle manufacturers who have been exposed to unfair trade practices from countries within Common Market for Eastern & Southern Africa (COMESA), India, China among others that offer subsidies.

It is imperative to note that the raw materials utilized by glass bottle manufacturers is almost one hundred percent locally procured. This would have therefore instigated a chain reaction in the local supply chain affecting not only the glass manufacturers, but the players of the forward and backward linkages created by the same.

It seems that this amendment was instigated by the Tanzania case against Kenya at the East African Court of Justice, and the Finance Act, 2021 has now prudently addressed this matter by excluding goods that are imported from within the East African Community. This is the correct position considering that goods from the region that meet the Rules of Origin Criteria envisaged by Article 14 of the Protocol Creating the Customs Union as read with the East African Community Rules of Origin Regulations should not suffer any import duties while entering the regional market.



The Finance Act, 2021 has introduced excise duty on the items listed in the table below

<b>Effective Date</b>	1st July 2021
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Description	Rate of Excise Duty
Jewellery of tariff heading 7113 and imported jewellery of tariff heading 7117	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	Shs. 1,200 per kg
Articles of plastics of tariff head 3923.30.00	10%
Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni, couscous, whether or not prepared	20%
Imported furniture of any kind used in offices, kitchen, bedroom and other furniture of tariff number 9403	25%
Imported eggs of tariff heading 04.07	25%
Imported onions of tariff heading 07.03	25%
Imported potatoes, potato crisps and potato chips of tariff heading 07.01	25%
Imported 3907.91.00 unsaturated polyester	10%
Imported 3907.50.00 Alkyd	10%
Imported 3905.91.00 Emulsion VAM	10%
Imported 3903.20.00 Emulsion-styrene Acrylic	10%
Imported 3905.19.00 Homopolymers	10%
Imported 3906.90.00 Emulsion B.A.M	10%

# Our View

## Jewellery

The Finance Act, 2021 proposes to impose excise duty on jewellery and can again be seen to be done in a bid to expand the tax base and raise revenue. It is worthwhile to note that excise duty on jewellery is applicable to articles of jewellery and parts thereof, of precious metal or of metal clad with precious metal and imported imitation jewellery. Ladies Beware!

## Nicotine Products

This can be construed to expand the tax base by adding more products that contain nicotine or nicotine substitutes as there was no excise tax on such products under Kenya's excise laws.

Nicotine pouches are marketed as a safer alternative for smoking addicts who want to quit the habit but are addicted. The industry players on their part argue that this would mean that excise duties on nicotine pouches would be more than twice the excise paid on cigarettes which would make the product unviable.

More recently, BAT Kenya, a global multinational in Kenya Launched non-tobacco nicotine pouches in the Kenyan Market under the brand called Lyft. BAT further rolled out investment of 2.5 billion in a new factory within Kenya to produce the nicotine pouches for the market. The factory is expected to deliver an estimated KES 75 billion in dollar generating export revenues to the nations GDP and support the creation of over numerous highly skilled jobs opportunities for Kenyans.

The potential impact of this tax hereof is substantial as it will not motivate smokers to seek safer and less harmful options. It will also have an economic impact whereby BAT will not be able to go back to the market with the product which could result in job losses and lost revenue opportunities associated with the new investment.

## Unsaturated polyester, alkyd, emulsion and homopolymers

From a review of the Hansard reports discussing this Finance Act, the introduction of this excise duty was geared towards protecting the local manufacturers from unfair foreign competition. The challenge becomes that these consumers have access to raw materials especially from countries like Egypt that are part of the Common Market for Eastern and Southern Africa (COMESA) and hence penetrate our Kenyan market duty free and furthermore enjoy an additional export duty subsidy. These privileges place them at a competitive advantage thereby compromising our local manufacturers as they are able to reduce their prices considering the subsidy they are provided with in their country.

The World Trade Organisation (WTO) that Kenya is also a member of, identifies with import restraints as trade remedies. The most commonly used are antidumping measures to counteract unfairly low prices. The WTO Agreement on Antidumping deems that goods are "dumped" when companies export them at prices lower than those at which they sell in their home market. Dumping is not illegal in itself; it becomes illegal as soon as it results in injury to local businesses in the importing country.

## Imported Furniture, Eggs, Onions and Potatoes

This again is yet another move to protect local producers of these products. This is definitely a positive move but still we call upon the National Treasury and the Ministry of Industrialization, Trade and Enterprise Development to implement the Trade Remedies Act as a matter of urgency. This will assist to curb penetration of dumped and subsidized products from Foreign states into Kenya. Our textile industry, agro based industries, steel industry, glass industries that are thriving have been vulnerable to cheap imports. There is dire need to implement the Trade Remedies Act by imposing counter veiling measures such as anti-dumping and suspended duties to protect these local manufacturers from unfair competition.

## B. Excisable Services

Effective date: 1st July 2021

- Increase the rate of excise duty on telephone and internet data services from 15% to 20% of their excisable value.
- Re-introduction of excise duty on betting services at a rate of 7.5% on the amount wagered or stacked.
- Introduction of excise duty on gaming at a rate of 7.5% of the amount wagered or staked.
- Introduction of excise duty on prize competition at a rate of 7.5% of the amount paid or charged to participate in a prize competition.
- Introduction of excise duty on lottery (excluding charitable lotteries) at a rate of 7.5% of the amount paid or charged to buy lottery ticket

### Our View

#### Telephone and Internet Data Services

The telephone and internet data sector can be seen to be one of the few sectors that grew rapidly despite the challenges faced by other sectors amidst effects of COVID 19. This was of course informed by the change in the mode of operations for business people and students across the country placing more reliance on online platforms.

This avenue not only provides additional revenue to the Exchequer but can also been seen to target a certain bracket of the society. A common mwananchi would be happier not having to pay additional tax on his loaf of bread as that would have a direct impact on his ability to put a meal on his table.

#### Betting, Gaming, Competition and lottery (excluding charitable lottery)

The Government is also set to charge excise duty will be charged on the amount wagered or staked on betting and gaming, on price competition, and on lottery (excluding charitable lottery). The amendment on betting drew a lot of attention in the last Finance Act, 2020 that deleted this charge giving rise to a lot of controversies. This can be viewed to be a step that is seen as discouraging investment in this sector as well as raising the revenue collection base.

#### Definition of “other Fees”

The Finance Act, 2021 deletes the words “fees or commissions earned in respect of a loan” from the definition of other fees.

### Our View

This exclusion would previously exempt these fees from excise duty. With this exclusion, fees and commissions earned in respect of a loan will be subject to 20% excise duty. This is meant as a revenue raising measure. It is worthwhile to note that there have been litigation cases on this matter between Financial Institutions and the Kenya Revenue Authority.

Effective Date

1st July 2021





# Exemptions from Excise Duty

Effective date: 1st July 2021

## a) Exemption of illuminating kerosene supplies to licensed or registered manufacturers

The Act has exempted from excise duty illuminating kerosene supplies to licensed or registered manufacturers of paint, resin or shoe polish in such quantities as the Commissioner may approve.

## Our View

Excise tax on illuminating kerosene was introduced in 2016 with the main aim being to curb increased adulteration of fuel in Kenya which denied oil marketers and the Government their revenues. Simultaneously, it is important to appreciate that kerosene is one of the most important raw material in the manufacture of resins, paints and shoe polish. The excise tax increased the cost of production very significantly making the products uncompetitive against imports from Common Market for Eastern and Southern Africa (COMESA) and other partners states of the East African Community (EAC). The Finance Act, 2017 took cognizance of this fact and allowed refund of the excise tax.

The KRA systems are not designed to envisage use of excisable products in the form of raw materials by manufacturers of non-excisable products and hence the most probable reason for a complete exemption for this industry.

## b) Exemption of excisable services – sale of a ring back tune

The Act has exempted the sale of a ring back tune sale to a subscriber by mobile telecommunications service provider.

## Our View

This is a welcome move by artists and is a good aim by the government to promote artists who earn income through sale of this ring back tune.

# Tax Exempt



# Tax Procedures Act



# Section 3 – Definition of Tax law

The Finance Act, 2021 has included “Miscellaneous Fees and Levies Act 2016” to the definition of Tax law under section 3 of the Tax Procedures Act, 2015.

## Our View

This translates to the scope of the Tax procedures Act, 2015 being expanded from the previous Tax Laws of Income Tax Act, VAT, & Excise Duty Act and that administrative matters under the Miscellaneous Fees and Levies Act 2016 will be governed by the Tax Procedures Act.

We have on many occasions, challenged the Kenya Revenue Authority on imposition of penalties and interest and even assessments in the Miscellaneous Fees & Levies Act as this Act has been silent on the same and was not governed by the Tax Procedures Act nor the East African Community Customs Management Act (EACCMA). This therefore means that there is now clarity and the same will facilitate harmonization of domestic tax laws.

### Effective Date

1st July 2021

## What changed

No changes from what was initially introduced in the Finance Bill 2021.



# Section 3 – Multi-Lateral Agreements and Common Reporting Standards

Section 6 of the Tax Procedures Act has been amended by way of introduction of new sections 6A and 6B. The Finance Act, 2021 has amended this section by including confidentiality agreement by adding the following:

- Any multilateral agreements and treaties that have been entered into by or on behalf of Government of Kenya relating to international tax compliance and prevention of evasion or exchange of information on tax matters shall have effect in the matter stipulated in such agreements or treaties.
- Agreements specified above not be disclosed except in accordance with the conditions specified in the agreements.

The Finance Act, 2021 has also introduced a provision for a common reporting standard as highlighted in the subsequent paragraphs.

Common reporting standard “*means the reporting and due diligence standard for the automatic exchange of financial account information.*”

Financial institution means “*a custodial institution, a depository institution, an investment entity or a specified insurance company.*”

A Kenyan Financial Institution is defined to mean “*any financial Institution that is resident in Kenya but excluding a branch of the Financial Institution that is located outside of Kenya. Additionally, a Kenyan Financial Institution includes any branch of a financial Institution that is not resident in Kenya, if the branch is in Kenya.*”

A financial institution will be required to comply with the due diligence procedures and record keeping requirements as set out in the Common Reporting Standard Regulations.

## Our View

This provision is meant for Revenue Authorities to enhance compliance and disclosure of information that will work to increase transparency between the jurisdictions. It also provides legal anchorage on exchange of information effectively curbing revenue leakages and tax evasion.

### Effective Date

1st July 2021

## What changed

The Finance Act, 2021 has provided additional clarity on these provisions.



## Section 23 - Unit of currency

With the exclusion of non-residents persons who file returns and make payment through a local tax representative or those with a permanent establishment, the Finance Act, 2021 requires that non-resident persons transacting through a digital marketplace should maintain their records in convertible foreign currency with approval from the Commissioner. Personal Identification Numbers will be required for sellers over the digital marketplace.

### Our View

The foreign exchange concept is a welcome move considering that certain multinationals and local companies that deal in foreign exchange can now keep records in foreign currency. It also allows Kenya Revenue Authority visibility in foreign exchange transactions especially on transaction pertaining to Digital Service Tax. The Bill further proposes to compel persons selling goods and service over a digital marketplace to obtain a PIN.

**Effective Date**

1st July 2021



### What changed

No changes from what was initially introduced in the Finance Bill 2021.

TAX RATE



## Section 37 – Expansion on the Circumstances under which the Commissioner may refrain from assessing tax

The Finance Act, 2021 has allowed the Commissioner to refrain from assessing or recovering tax where there is “any other reason occasioning an inability to recover the unpaid tax”. Further, The Finance Act, 2021 provides that the Commissioner will be required to submit a report to the Cabinet Secretary containing details and amounts of taxes abandoned bi-annually.

### Our View

This will assist in providing necessary support to taxpayers who are genuinely unable to pay their dues and where supported could revive themselves.

#### Effective Date

1st July 2021

### What changed

No changes from what was initially introduced in the Finance Bill 2021.





# Repeal of Section 37A – Tax amnesty on rental income

The Finance Act, 2021 repeals provisions of Section 37A on tax amnesty for rental income. This provision barred the Commissioner from collecting principal taxes, interest and penalties arising from rental income for the period before or during year of income 2013.

## Our View

This is just a clean up of the Tax Procedures Act considering the time lapse of the period. It is worthwhile to note that the Finance Act, 2020 provided for a voluntary tax disclosure programme that one can still take advantage of.

### Effective Date

1st July 2021

## What changed

No changes from what was initially introduced in the Finance Bill 2021.



**TAX**  
AMNESTY



## Section 42A - Deletion of Exemption from Withholding VAT

The Finance Act, 2021 has repealed Section 42A (4A) of the Tax Procedures Act that previously empowered the Commissioner to exempt any supplier from withholding VAT obligation if such supplier sufficiently demonstrated that he is going to be in a continuous credit position due to the nature of his business, for a period of not less than 24 months.

### Our View

This provision will have a negative impact on persons who are in perpetual credit position arising from withholding VAT. It may have been informed by the reduction of withholding VAT from 6% to 2%. This mainly will affect persons dealing in low margin businesses whose cashflow can end up being held in these refunds thereby constricting their operations.

#### Effective Date

1st July 2021

### What changed

No changes from what was initially introduced in the Finance Bill 2021.



# Withholding tax

# Section 47 - Refund of Overpaid Tax

The Tax Procedures Act empowers the Commissioner to utilize overpaid taxes against other tax obligations. The Finance Act, 2021 has allowed verified refunds to be utilized against other outstanding tax obligations. Upon receipt of this approval, any interest and penalty shall cease to accrue on the outstanding tax from the date of notification of the refund. Any outstanding tax after utilizing the refund will continue to accrue interest and penalty as appropriate.

Where the commissioner is satisfied that a taxpayer has overpaid tax, the commissioner is empowered to deem the overpayment to have been offset against future tax liabilities.

## Our View

This is a welcome move as it brings more clarity on treatment of overpaid taxes. However, it will be of interest how the commissioner will be making decisions to utilize tax overpayments for future tax liabilities which have not been established.

### Effective Date

1st January 2022

## What changed

The Finance Act, 2021 has provided additional clarity on these provisions.



## Section 57 – Admissibility of Evidence

The amendment is meant to allow for admission of evidence obtained as a result of inspection of records, goods etc. by the Commissioner.

### Our View

This is a welcome clarification as such information has always been relied by the commissioner as evidence in the past.

**Effective Date**

1st July 2021

### What changed

No changes from what was initially introduced in the Finance Bill 2021.

## Section 77 – Due date for submission of notice of Objection

The Finance Act, 2021 has aligned the submission of notice of objection or tax return electronically with the due date provided in the relevant tax laws.

### Our View

This has brought clarity to effective due dates for submissions of notice of objections or return electronically. These could be done on the applicable day online or where the due date falls on a Saturday, Sunday, or public holiday in Kenya, the due date shall be the previous working day.

**Effective Date**

1st July 2021

### What changed

No changes from what was initially introduced in the Finance Bill 2021.

## Section 88 – Penalties for non-compliance with common reporting standard obligations

The Finance Act, 2021 has introduced penalties for non-compliance with Common Reporting Standards obligation. These penalties are to the tune of a fine of KES 100,000 or imprisonment for a term not exceeding 3 years for each false statement or omission. Furthermore, it provides a fine of KES 1,000,000, for each failure, for a financial institution that fails to file an information return or 'Nil' return. There is also a general penalty of KES 20,000 and subsequent KES 20,000 per day for non-compliance for a period not exceeding 60 days.

### Our View

This amendment is meant to enhance compliance with common reporting standard obligations.

Effective Date
1st July 2021

### What changed

No changes from what was initially introduced in the Finance Bill 2021.

## Section 96 – Intervention from Relevant Authorities – Digital Service Tax

The Finance Act, 2021 has allowed the Commissioner to seek for the intervention of a relevant authority in the collection of digital service tax.

### Our View

This amendment allows the Commissioner to seek for intervention of other Government Agencies such as the Communication Authority of Kenya, Ministry of ICT among others to compel compliance with digital service tax obligations. This is a significant tool in enforcement of tax laws.

Effective Date
1st July 2021

### What changed

No changes from what was initially introduced in the Finance Bill 2021.

## Section 99 – Offences relating to enforcement powers

The Finance Act, 2021 amends section 99 of the Tax Procedures Act to delete the reference to Section 59(1) (c).

### Our View

This is a clean-up since section 59(1)(c) is not the only instance where an offence of failure to appear before the Commissioner is noted.

#### Effective Date

1st July 2021

#### What changed

No changes from what was initially introduced in the Finance Bill 2021.

## Section 111 – Protection of officers on reasonable cause

The amendment is meant to protect officers of the Authority against suits being brought against them in cases of implementation of the law on the basis of “good faith”.

### Our View

This provision will protect Kenya Revenue Authority officers against litigation being brought against them in the implementation of tax laws done in good faith. The definition of “good faith” is open to various interpretations. This amendment could shield officers from prosecution under the guise of acting in good faith.

#### Effective Date

1st July 2021

#### What changed

No changes from what was initially introduced in the Finance Bill 2021.

## First Schedule – Transactions for which a PIN is required

The Tax Procedures Act in the First Schedule has been amended to include and obligate persons carrying out business over the internet or an electronic network including a digital marketplace to apply for and obtain PINs from the Commissioner before engaging in such activity.

### Our View

This amendment is meant to enhance compliance of digital service tax services in a bid to mobilize revenues from sale of goods and services over the digital marketplace.

#### Effective Date

1st July 2021

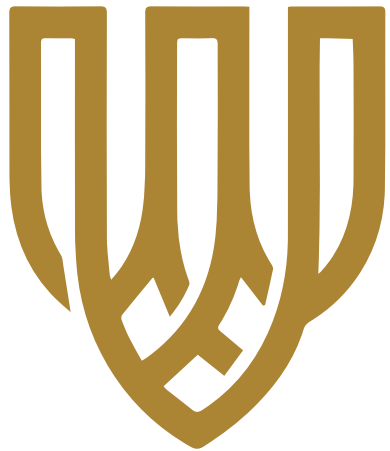
#### What changed

No changes from what was initially introduced in the Finance Bill 2021.



# Miscellaneous Fees & Levies Act

NO. 29 OF 2016



## Section 8A – Exemption from anti-adulteration Levy

The Finance Act, 2021 amends the provisions on anti-adulteration levy to exclude the licensed or registered manufacturer of paint, resin, or shoe polish from the payment of the levy on all illuminating kerosene imported for their use.

### Our View

The Finance Act, 2018 introduced an anti-adulteration levy of KES 18 per litre to be levied at the point of importation to curb adulteration of diesel fuel by unscrupulous traders. The Finance Act, 2019 provided for refund of the levy for all manufacturers who use illuminating kerosene as an input. Just as the case for excise duty, the Kenya Revenue Authority has not been able to configure its systems to facilitate refund of this levy to these manufacturers and hence the exemption.

#### Effective Date

1st July 2021

### What changed

This is a new provision introduced in the Finance Act, 2021.

## Section 9A – Refund of overpaid tax and penalties and interest

**Effective Date: 1st July 2021**

The Finance Act, 2021 has introduced the application of the Tax Procedures Act on refund of over-paid tax in relation to fees and levies overpaid or paid in error under the Act. It also covers the issue of determination by the Commissioner of penalties and interests on fees that remain unpaid.

### Our View

This is in line with the earlier amendment to the TPA to include the Miscellaneous Fees & Levies Act as part of a tax law under its umbrella. This is a welcome move considering that the levies covered under the Miscellaneous Fees & Levies Act such as export duty, Import Declaration Fee (IDF), Railway Development Levy (RDL), anti-adulteration levy among others will now be covered within the realm of the TPA.

#### Effective Date

1st January 2022

### What changed

No changes from what was initially introduced in the Finance Bill 2021.

# Second Schedule – Exemption from IDF and RDL

The Finance Act, 2021 empowers the Cabinet Secretary to exempt in the public interest, or to promote investment and the value of which shall not be less than five billion shillings, from payment of IDF and RDL.

## Our View

Prior to the Finance Act, 2020 the Minister had the powers to exempt in public interest, IDF and RDL. This amendment mirrors this deleted provision highlighting the importance of the same. This will be an incentive to strategic investors who can take advantage of this provision. It will be prudent to have controls on this in line with the provisions envisaged by Article 209 and 210 of the Constitution of the Republic of Kenya. The issue of public interest is subject to wide interpretations. There may be need to have parliamentary oversight on the same.

### Effective Date

1st July 2021

## What changed

No changes from what was initially introduced in the Finance Bill 2021.

tax exempt



# Stamp Duty Act

The Stamp Duty Act is amended in section 52 and section 117 to provide that any conveyance or transfer, or an agreement for a conveyance or transfer, in relation to a family trust shall not be chargeable with any duty, if the conveyance or transfer is in favour of the family trust.

## Our View

This is meant to exempt from stamp duty certain family trust transactions. The amendment is a consequence of the proposed changes to trust law and other amendments as highlight under the Income Tax Act above.

**Effective Date**

1st July 2021



# Kenya Revenue Authority Act

The Finance Act, 2021 has increased the maximum rewards to persons who provide information leading to identification and recovery of unassessed duties or taxes as follows:

- The maximum reward for information leading to identification of duties and taxes has increased to KES 500,000 from KES 100,000.
- The maximum reward for information leading to recovery of unassessed duties or taxes has increased to KES 5 million from KES 2 million.

## Our View

This amendment is an incentive to informers to provide crucial information that will lead to recovery and collection of taxes. It is also an avenue for Kenya Revenue Authority to incentivize citizens to encourage whistle blowing on tax evasion.

**Effective Date**

1st July 2021



# Retirement Benefits Act

The Finance Act, 2021 amends the Retirement Benefit Act by expanding the definition of “retirement benefits scheme” to include any scheme/arrangement providing post-retirement medical cover.

The definition of Corporate Trustee has been defined to mean a limited liability company as covered under the Companies Act, 2015 and whose main purpose under law or any instrument constituting it, is to undertake trusts and includes a trust corporation. The Act provides further guidance on the qualifications for registration as a Corporate Trustee.

The applicant must, among others:

- Meet the set minimum paid up share capital as may be prescribed by the RBA.
- Be capable of meeting its obligations to members and sponsors as specified in the scheme rules.
- Have professional and technical capacity and operational systems to dispose their functions.
- Not have been partially or fully responsible for the deregistration of a previous corporate trust.

The Act has extended the period for submission of audited accounts by a maximum of 3 months upon application by the trustees.

The Retirement Authority Act has been amended in section 53B to provide that where an employer has failed to remit contributions, the Trustees may with the approval of the RBA, appoint the Kenya Revenue Authority, as an agent, to collect unremitted contributions, interests, and penalties.

The Trustees will be required to write a request to RBA for approval and demonstrate that they have taken all reasonable effort to recover unremitted contributions from a defaulting employer without any success. RBA shall be required therefore consider the application within twenty-one days from the date of receipt of the request.

## Our View

These amendments expand the scope of the Retirement Benefit Authority. It also enhances compliance by the trustees. It also addresses the requirement of retired persons to access healthcare as necessary.





# Other Notable Amendments



# Liquefied Petroleum Gas (LPG)

The Finance Act 2020 amended the Second Schedule to the VAT Act (Zero Rated supplies) by deleting the supply of Liquefied Petroleum Gas (LPG) including propane (with effect from 1 July 2021). LPG henceforth shall be subject to VAT at the standard rate of 16%.

## The Implication

Universal access to modern energy services by 2030 is one of the three goals of the Sustainable Energy for All for which Kenya is a part of and in a bid to deal with the problem of traditional sources (wood, charcoal, or kerosene) of cooking energy, Kenya's government set a long-term goal of having households adopt clean cooking fuels which include Liquefied petroleum gas (LPG).

Kenyan households have since June 2016 been enjoying low cooking gas prices after the Treasury scrapped the tax on LPG to cut costs and boost uptake among the poor who rely on dirty kerosene and charcoal for cooking. The reintroduction of VAT on cooking gas will consequently reverse gains made in weaning households off dirty fuel.

Several stakeholders, among them the Energy and Petroleum Regulatory Authority, have stated that a more expensive LPG would push many households to biomass sources like wood and charcoal.

It is important to note that LPG is already relatively expensive to the cost of competing fuels in Kenya. As a result, the rise in the cost of cooking gas is expected to pile pressure on families that are struggling to foot daily bills due to job losses and drastic cuts in earnings in the wake of the COVID 19 pandemic.

## Our Proposed Amendment

We and other key players in the industry had proposed that an amendment is made to the second schedule of the VAT Act under the Finance Act 2021, to delete the supply of LPG from standard rated supplies. We did this on the basis that it is important to take into account that until the retail price of LPG has been brought down substantially, it is unlikely that lower-income Kenyans will sustainably switch to LPG and subsequently affecting the country's goal to achieve clean cooking by 2030.

Unfortunately, this submission was not considered and LPG is now subject to VAT.



# Disclaimer

This advisory note is provided for general information and not intended to address the circumstances of any particular individual or entity nor a substitute for any tax advisory or professional advice.



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