Finance Act, 2022 Analysis

Kenya

July 2022

kpmg.com/eastafrica

Preamble

The Finance Act, 2022 (the Act) was signed into law by the President on 21 June 2022, published on 23 June 2022 and gazetted on 08 July 2022.

The Act has introduced a number of changes that aim to raise additional revenues as well to align the tax legislation to the government development priorities.

A few examples include introduction of a lower tax rate of 15% in respect of a company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority. The lower rate that will apply for the first ten years, dovetails with the recent launch of the Nairobi International Financial Centre (NIFC).

The Act has also introduced a number of changes designed to ensure equity in application of tax laws for entities in similar business by excluding from thin capitalization rules microfinance institutions licensed under Microfinance Act, entities licensed under the Hire Purchase Act; Non-deposit taking institutions involved in lending and leasing business, companies in the business of manufacturing human vaccines, holding companies regulated under Capital Markets Act and Companies engaged in manufacturing whose cumulative investment is at least five billion shillings where the investment is outside Nairobi or Mombasa County .

The Act also raised the Capital Gains Tax from 5% to 15%. This move is designed to align the Kenyan CGT rate with the regional CGT rates, despite stakeholders' proposal to retain the same at 5% given the fact that significant portion of capital gains on disposal of properties is often attributable to inflation.

In a move to protect consumers from increase in prices due to annual inflation adjustments on excise duty of specified products, the Act has amended the Annual inflation adjustment provision to empower the Commissioner General to exempt specified products from inflation adjustment after considering the circumstances prevailing in the economy in that year in respect of such products.

The COVID-19 pandemic has impacted the Government's ability to meet its expenditure requirements amid pressure for additional resources to service the current debt load. This informs the additional tax revenue mobilization measures contained in the Act, to finance the ambitious FY 2022/23 budget of KES 3.3 trillion.

We provide in the ensuing pages our analysis of the changes.

Corporation Income Tax

Corporation Income Tax

Definition of "fair market value"

Enacted provision: The Act has defined the term "fair market value" to mean: the comparable market price available in an open and unrestricted market between independent parties acting at arm's length and under no compulsion to transact, which is expressed in terms of money or money's worth.

Implication: The definition clears the ambiguity on the meaning of the term fair market value as used in the Income Tax Act (ITA).

Effective date: 1 July 2022

Non-resident persons with a permanent establishment in Kenya off the hook on Digital Service Tax

Enacted provision: The enacted provision excludes non-resident persons with a permanent establishment (PE) in Kenya from paying Digital Service Tax (DST).

Implication: This is a relief to non-residents with a PE in Kenya who are already subjected to corporation tax on the income derived from digital platforms.

This will prevent double taxation of the income derived from digital platforms by a Kenyan PE and create a level playing ground with resident services providers who are not subjected to DST.

Effective date: 1 July 2022

Cash donations - Tax deductible!

Enacted provision: The Act now allows deduction of donations paid to any tax-exempt charitable organization.

Previously, the only donations which were tax deductible were the ones which were 'cash' in nature and were paid either to charitable organizations which were tax exempt and registered under the Societies Act or the Non Governmental Organizations Coordination Act, or for projects approved by the CS National Treasury.

Implication: This will encourage organisations to make donations without impacting their effective tax rate.

Effective date: 1 July 2022

Aligning of the Indefeasible Right of Use allowance

Enacted provision: The Act has deleted the provision that allowed the deduction of 5% of the cost incurred on purchase or acquisition of an indefeasible right to use a fibre optic cable by telecommunication operators.

Implication: The Second Schedule to the ITA already provides for a capital allowance of 10% on the cost of the indefeasible right of use of a fibre optic cable by telecommunication operators. The amendment removes the confusion on the applicable deduction.

Effective date: 1 July 2022

Corporation Income Tax

Enhanced Provisions of the Finance Bill 2022

Institutions off the Thin Cap hook

Enacted provisions: The Finance Act, 2021 changed the basis for interest restriction under thin capitalization rules from using the ratio of debt to equity of 3:1 to 30% of Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA).

Banks and other financial institutions were exempted primarily due to their business operating model which largely involves borrowing of funds for onward lending.

The following persons, have now also been excluded from the thin

capitalization rules.

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

Implication: Exclusion of the above entities is a welcome move as interest expense is a major business expense for these companies these entities. Disallowing the interest expense would have increased the cost of doing business in Kenya.

Effective date: 1 July 2022

Deferment of realized foreign exchange loss now aligned with new thin capitalization rules

Enacted provision: The Act now provides for the deferment of realized foreign exchange loss for a company whose gross interest paid or payable to related persons and third parties ***exceeds thirty per cent of the company's earnings before interest, taxes, depreciation and amortization*** in any financial year. However, these provisions, do not apply to persons exempted from thin capitalization rules.

Implication: The new provision aligns with the thin capitalization rules introduced by the Finance Act, 2021.

Effective date: 1 July 2022

Gains from Financial Derivatives accruing to non-residents now taxable

Enacted provision: The enacted provision brings to tax gains accruing to non-resident persons from transactions involving financial derivatives in Kenya, excluding financial derivatives traded on the Nairobi Securities' Exchange.

The Act defines a financial derivative to mean "a financial instrument the value of which is linked to the value of another instrument underlying the transaction which is to be settled at a future date."

The gains will be subjected to withholding tax at 15%, subject to Regulations to be issued by the CS National Treasury.

Implication: The enacted provision will widen the tax base by bringing to tax gains accrued by non-resident persons from financial derivatives, while still maintaining the competitiveness of the financial derivatives traded on the Nairobi Securities' Exchange.

Additionally, the charge to tax gains derived by non-resident persons from financial derivatives could be one way of promoting equity because such gains are taxed on resident persons. We anticipate that the regulations will provide more clarity on this grey area.

Effective date: 1 January 2023

Higher CGT rate - From 5% - 15%!

Enacted provisions: The Act has increased the rate of capital gains tax (CGT) from 5% to 15%.

However, where a firm (certified by the Financial Centre Authority) invests five billion shillings in Kenya, and the transfer of such investment is made after 5 years, the applicable CGT rate will be the rate that was prevailing at the time the investment was made.

Implications: This move is designed to align the Kenyan CGT rate with the regional CGT rates, despite stakeholders' proposal to retain the same at 5% given the fact that significant portion of capital gains on disposal of properties is often attributable to inflation.

Effective date: 1 January 2023

Transfer Pricing

Transfer Pricing

Transfer Pricing implications for entities operating in a preferential tax regime

Enacted Provision: The Act has amended section 18 (A) of the ITA to include within the ambit of Transfer Pricing (TP), transactions between resident persons and the following persons located in a preferential tax regime;

i. A related resident person;

ii. A non-resident person;

iii. An associated enterprise of a non-resident person; and

iv. A permanent establishment of a non-resident person.

A "preferential tax regime" has been defined as

a) Any Kenyan legislation, regulation or administrative practice which provides a preferential rate of tax to such income or profit, including reductions in the tax rate or the tax base; or

b) A foreign jurisdiction which –

- Does not tax income;
- Taxes income at a rate that is less than 20%;
- Does not have a framework for the exchange of information;
- Does not allow access to banking information; and
- Lacks transparency on corporate structure, ownership of legal entities locates therein, beneficial owners of income or capital, financial disclosure or regulatory supervision.

Implication: The provision aims to widen the scope of transactions falling within the ambit of transfer pricing by including non-resident persons operating within the preferential tax regime. The provision will see increased scrutiny and compliance burden on taxpayers transacting with non-resident persons in a preferential tax regime.

Effective date: 1 January 2023

Transfer Pricing

Country by Country reporting notification requirement for Multinational Enterprises

Enacted Provision:

The Act has introduced CbC (Country by Country) report notification requirements for MNEs resident in Kenya with a gross turnover of KES 95B (approximately EUR 750M) and above.

The following MNEs will be required to notify the Commissioner not later than the last day of the reporting financial year of the Group whether it is;

i. The Ultimate Parent Company (UPE) of the group or;

ii. A Surrogate Parent Entity (SPE); or

iii. If its neither the UPE or SPE, the identity of the constituent entity which is the UPE or the SPE and tax residence of that constituent entity.

The notification requirement is effective from the year of income 2022.

Implication:

The notification is aimed at increasing transparency by ensuring that the Commissioner is aware of the entity within the MNE Group with CBC filing obligations.

Effective date: 1 July 2022

Filing of country-by-country reports, master file and local files for MNEs

Enacted Provision:

i. Country by country reporting: MNE's resident in Kenya with a gross turnover of more than KES 95 billion including extraordinary or investment income will be required to file a CbC report in Kenya containing details of business activities and financial information.

The CbC report should be filed within 12 months after the last day of the reporting financial year of the MNE group.

ii. Local file and master file: In line with the three-tiered approach recommended by OECD BEPS Action 13, the local file shall contain material transactions of the local taxpayer while the master file shall contain standardized information relevant for all the MNE group members.

These shall be filed no later than six months after the last day of the reporting financial year of the MNE group.

The CbC report, local file and master file requirements shall apply to returns for the year of income 2022 and subsequent years of income.

Implication: MNE's resident in Kenya will be faced with additional reporting and Transfer Pricing documentation requirements which willl consequently lead to additional scrutiny and increased Transfer Pricing audits from the KRA.

Given the revenue threshold, it is expected that the number of MNEs qualifying for this additional reporting requirement will be few.

Effective date: 1 July 2022

Pay As You Earn

Pay As You Earn

Clarity on definition of permanent home

The Act has introduced a definition of 'Permanent Home' to include a place where an individual resides or which is available to that individual for residential purposes in Kenya, or where in the opinion of the Commissioner the individual's personal or economic interests are located.

Implication: This amendment clarifies the ambiguity on the definition of a permanent home when determining tax residency.

Effective Date: 01 July 2022

Change in computation of benefits for ESOPS

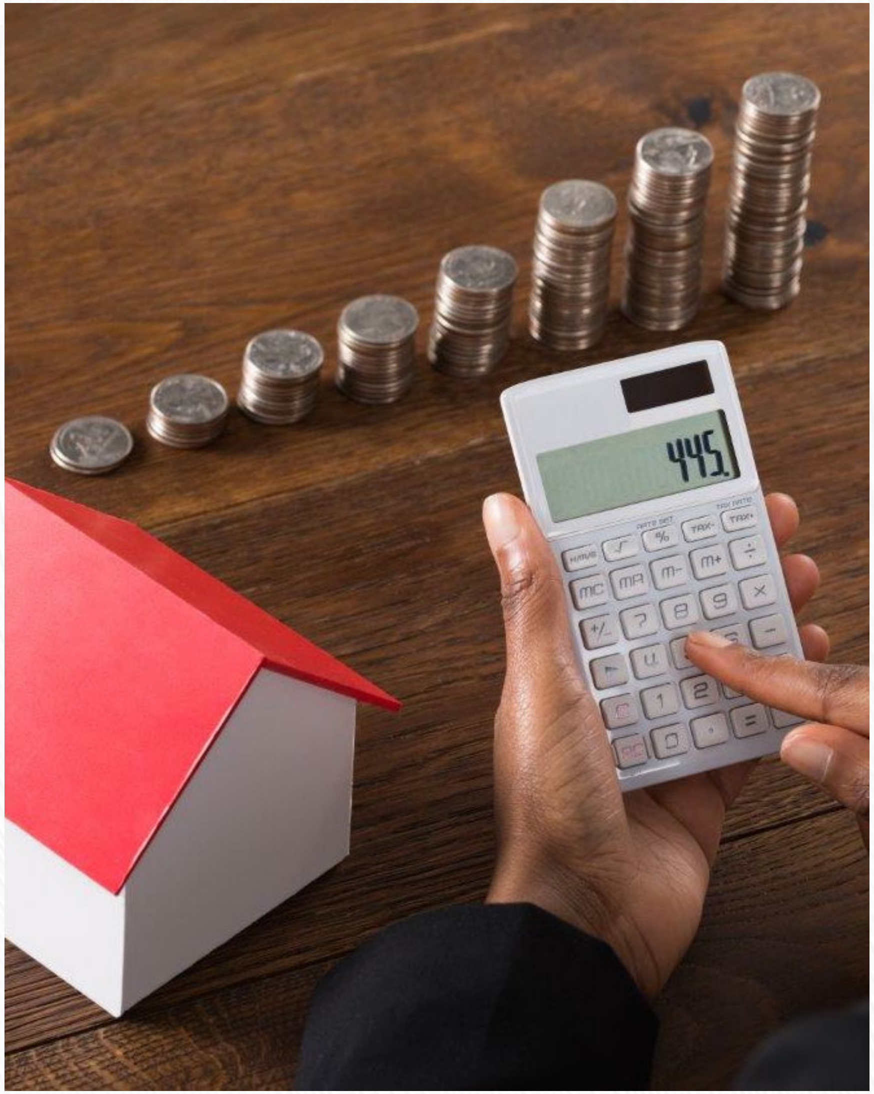
The Act has amended the basis for the taxable benefit arising from employee share option plan to be the difference between the market value per share (on the date the employee exercises the option) and the offer price (on the date when the option is granted by employer).

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

Implication: Previously, the difference between the offer price and market price was computed at the date the option was granted by the employer.
The amendment takes into account the change in value of shares over time. Thus, taxing the benefit on the actual cost to the employer as at the date the benefit crystallizes.

The deletion of the requirement to have the ESOPs registered with the Commissioner provides clarity on taxation of unregistered schemes which includes ESOPs provided by non-resident parent companies of companies that are based in Kenya.

Effective Date: 01 July 2022



Value Added Tax

Value Added Tax

Exportation of taxable services

The Act seeks to reclassify the exportation of services from exempt status to standard rate at 16%. However, exportation of taxable services in respect of business process outsourcing is now zero-rated.

Implication : This amendment is bound to cause confusion as the VAT Act does not define what constitutes "Business Process Outsourcing" services.

The term business process outsourcing is only defined under the Special Economic Zones Act (SEZ Act) where it is defined as the provision of outsourcing services to business for specific business functions or processes such as back office support services in human resources, finance, accounting and procurement **among other services**.

This definition is ambiguous and in recent decisions the court has been reluctant to import definitions from other legislation. The issue of exported services has been contentious in the past few years. Given the current changes, the disputes are only going to increase.

Online transactions headache!

Enacted Amendment: The Act seeks to bring clarity on online transactions subject to VAT. The following changes have been made:

- The Act has amended the definition of a digital market place by deleting the expression "sell or provide services, goods or other property" and substituting it with the words "sell goods or provide services"
- The Act has also amended the VAT Act by including a provision that exempts services made over the internet or an electronic network or through a digital marketplace from Reverse VAT
- The Act has also amended the VAT Act by excluding persons supplying imported digital services over the internet or an electronic network or though a digital marketplace from the KES 5 million VAT registration threshold.

Implication: The amendment clarifies what constitutes a "digital market-place" for VAT purposes. Previously, a provider of imported digital services could argue that they did not meet the VAT registration threshold of KES 5 million as a basis for not registering for DSVAT. By excluding the suppliers of imported digital services from the KES 5 million VAT registration threshold, all suppliers of imported digital services will now be required to register for the DSVAT obligation, regardless of the value of supply made in Kenya.

The amendment also clarifies that imported digital services are not subject to Reverse VAT. Under the current Digital Services VAT Regulations, businesses importing services under the B2B model are required to notify the person supplying imported digital services that they will account for Reverse VAT on the such supplies. With the removal of the requirement to account for Reverse VAT on imported digital services, the notification requirement by resident businesses to the non-resident suppliers of digital services is now not necessary. With this amendment, there is need to also update the regulations to align with the substantive legislation.

Effective Date: 01 July 2022

Reduced VAT on Liquified Petroleum Gas

Enacted amendment: The Act seeks to reduce VAT on Liquefied Petroleum Gas (LPG) including propane from 16% to 8%.

Implication: The Finance Act, 2020 had introduced VAT on LPG, however, the implementation was suspended for a year and the change took effect as from 1st July 2021. The introduction of VAT on LPG which is an alternative source of energy increased the price of this commodity hence reducing its accessibility to the common *mwananchi*.

The change will help reduce the cost of cooking gas which is a cleaner and more environmental friendly energy source.

Effective Date: 01 July 2022

Sealing loophole on claiming of input VAT

Enacted amendment : The Act has amended Section 17 of the VAT Act that provides for deduction of input VAT to the extent that the input VAT was acquired to make taxable supplies.

The Act has also provided that input VAT is only claimable by a registered person if the input VAT was declared in a return for the period.

Further the Act has sought to provide clarity on the documentation required to claim input VAT by the Oil Marketing Companies (OMCs) participating in the Open Tender System for the importation of petroleum products that have been cleared through a non-bonded facility, The documents will include; the custom entry showing the name and PIN of the winner of the tender and the name of the other oil marketing companies participating in the tender.

NB: Any input tax that may have been incurred by an oil marketing company participating in the Open Tender System before the coming into force of this provision shall be claimed within twelve months after this provision comes into force.

Implication: This amendment clarifies that input VAT is only claimable if it has been declared in the VAT return.

Further, the amendment on documentation required by the OMCs to claim input VAT is intended to ensure that there is accountability in the Open Tender System. This amendment has been enacted to take care of private cargo imports under the Open Tender System where the import cargo for different oil marketers is declared under the PIN of the winner of the tender.

Effective Date: 01 July 2022

More goodies for manufacturers

Enacted amendment : The Act has amended Section 17 (5) by providing that registered manufacturers may apply for a refund of excess input VAT incurred in the provision of taxable supplies to an official aid funded projects.

Implication: Official aid funded projects are specified to have an exempt VAT status as provided for under Paragraph 51 of Section A of Part 1 of the First Schedule to the VAT Act. The Government through the Tax Amendments Act of 2020 allowed manufacturers who deal with these projects to claim input VAT despite the exemption status.

The amendment to further allow the manufacturers to seek a refund of the excess input VAT is a welcome move as it will ensure that the local manufacturers are not put at a competitive disadvantage when competing against foreign imports.

Effective Date: 01 July 2022

Aligning the VAT Act and TPA provisions on imported goods

Enacted amendment: The Act has amended Section 22 of the VAT Act by adding the following provisions under subsection (4):

i. The Tax Procedures Act, 2015 shall apply with regard to imposition of interest and penalties; and

ii. in cases where interest becomes payable it shall not, in aggregate, exceed the principal tax.

Implication: This amendment brings clarity on the applicable penalties and interest on VAT on imported goods which are subject to customs control as there has been confusion on whether the penalties stipulated in EACCMA were applicable or the provisions under the TPA.

Effective Date: 01 July 2022

Enacted Amendment: The Act has deleted Section 30 of the VAT Act which provided for refund of tax paid in error.

Implication: This is a clean-up to align the VAT Act with the TPA with respect to refunds for overpaid taxes/taxes paid in error.

Effective Date: 01 July 2022

Value Added Tax

Reclassification of goods and services from VAT exempt status to standard-rated

The Act reclassifies the following supplies from exempt to standard rate 16%

- Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption.

- Taxable services for the direct and exclusive use in the construction and equipping of specialized hospitals with accommodation facilities upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption.

Implication: The intention of introducing the exemption was to make access to health affordable and therefore the deletion of this provision contradicts the Big 4 Agenda on universal coverage healthcare.

It is important to note that any exemption provided before assent of the Act would continue until the taxable goods and services in question are supplied in full.

Effective Date: 01 July 2022

Reclassification of goods from VAT exempt status to Zero Rated

The Act reclassifies the following supplies from exempt to Zero rated status

- Fertilizers of chapter 31 (Animal or vegetable fertilizers and mineral or chemical fertilizers)

Implication: The amendment is likely to result in reduction of fertilizer cost because manufacturers will be able to claim refund of the input incurred in production.

Effective Date: 01 July 2022

Reclassification of goods from standard rate to zero-rated

The Act has reclassified the following items from standard rate to Zero rate:

- Inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved from time to time by the Cabinet Secretary responsible for Agriculture.

Implication: This change coupled with zero rating of fertilizers will lead to reduction in cost of fertilizer and in return boost agriculture which is a key pillar the Kenya economy.

Effective Date: 01 July 2022

Reclassification of goods from Zero-rate status to Standard-rated

Enacted provision: The Act seeks to standard rate goods purchased from duty free shops by passengers departing to places outside Kenya.

Implication: The zero rating of goods sold at duty free shops is a practice held by many countries in the world as the goods are exported outside Kenya. This amendment will lead to increased prices of the goods sold at the duty free shops and may have a negative impact on brand awareness of Kenyan products.

Effective Date: 01 July 2022

Value Added Tax

Reclassification of goods from standard rate to VAT exempt

The following supplies are now VAT exempt:

Enacted Provision: The Act has proposed to exempt "Such capital goods the exemption of which the CS may determine to promote investment in the manufacturing sector: Provided that the value of such investment is not less than two billion shillings."

Implication: This is a welcome move for the manufacturing sector, however, there is a bit of ambiguity on what parameters the CS will use to provide such exemptions.

Effective Date: 01 July 2022

Affordable energy sources

Enacted provision: The Act has exempted fuel pellets and Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel) from VAT.

Implication: The fuel pellets in addition to the fuel briquettes is an alternative source of clean energy and therefore the exemption will go a long way in environmental conservation. Further, Bioethanol fuels are considered as environment friendly and energy efficient and is an alternative fuel to the fossil fuels and therefore will aid in environment conservation efforts.

Effective Date: 01 July 2022

Affordable health care

The Act seeks to exempt from VAT the following items:

- Plant and machinery for use by manufacturers of pharmaceutical products upon recommendation of the Cabinet Secretary.
- Medical oxygen supplied to registered hospitals.
- Urine bags, adult diapers, artificial breasts and colostomy or ileostomy bags for medical use.

Taxable goods, inputs and raw Materials imported or locally purchased by a company which is-

a) engaged in business under a special operating framework arrangement with the Government; and

b) incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least ten billion shillings

subject to approval of the CS, National Treasury, on recommendation of the CS for health.

Implication: With the upsurge of new Covid-19 variants and the escalating cost of treating ailments such as cancer, the amendment is a welcome move. These amendments will lower the cost of pharmaceutical products and vaccines and increase access to quality medical care. In addition, the amendment to exempt the plant and machinery for use by manufacturers of pharmaceutical products comes against the backdrop of investments into the health care such as the proposed Moderna vaccine production plant.

We also note that there is a drafting error in Part II of the First Schedule of the VAT Act which provides for exemption of services.

The Act has introduced an exemption for Taxable goods, inputs and raw Materials imported or locally purchased by a company which is-

a) engaged in business under a special operating framework arrangement with the Government; and

b) incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least ten billion shillings, subject to approval of the CS, National Treasury, on recommendation of the Cabinet Secretary for health.

subject to approval of the CS, National Treasury, on recommendation of the Cabinet Secretary for health.

We understand that the intention of the law was to exempt the services and not goods and we expect a correction in this respect.

Effective Date: 01 July 2022

Value Added Tax

Buy Kenya build Kenya – Exemption from VAT on local passenger vehicles

The Act seeks to exempt from VAT inputs and raw materials used in the manufacture of passenger vehicles and locally manufactured passenger motor vehicles. Based on this provision, locally manufactured means a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose total value comprises at least 30% of parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

Implication: The change is intended to encourage investment in the automotive sector. This is likely to spur manufacturing of passenger motor vehicles. Thus, it will make locally manufactured motor vehicles affordable, consequently reducing the dependence of second-hand motor vehicles. In addition, this will increase employment opportunities and impact the environment positively.

Effective Date: 01 July 2022

No room for error for overpaid VAT

The Act has deleted the provision of the VAT Act relating to VAT paid in error and moved its administration to the Tax Procedures Act. Currently, a taxpayer may apply for a refund of VAT paid in error within 12 months of making the error.

This effectively reduces the period for application for VAT refunds for amounts paid in error to six months.

Implication: The reduced period within which a person can apply for VAT paid in error means that taxpayers need to be more vigilant to identify instances where VAT is paid in error and lodge applications for refund in good time. At the same time, this proposal may require taxpayers to institute better controls within their system to reduce instances of VAT paid in error.

Effective Date: 01 July 2022

Excise Duty

Excise Duty

Annual inflation adjustment

Enacted Provisions: The Act has amended the annual inflation adjustment provision to empower the Commissioner General, by notice in the Gazette and with the approval of the CS, to exempt specified products from inflation adjustment after considering the circumstances prevailing in the economy in that year.

Implication: This is to protect consumers from increase in prices due to annual inflation adjustments on excise duty of specified products. However, the Act does not provide the parameters that the Commissioner General will use in determining the products to be excluded from the inflation adjustment review.

Effective Date: 01 January 2023

In-duplum rule for excise duty on imported goods

Enacted Provisions: The Act has aligned the imposition of interest with the provisions of the TPA. It has capped the interest payable with respect to unpaid taxes to the principal amount.

Implication: Currently, there are instances where the interest on unpaid excise duty exceeds the principal amount. This is a welcome relief to registered manufacturers and importers of excisable goods and also aligns with best international practice where the interest on unpaid taxes should not exceed the principal amount due.

Effective Date: 01 July 2022

Excise Duty

Amendments to the First Schedule to the Excise Duty Act, 2015 as below :

a) Increase in the rates:

Item	Old rate	New rate
Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter”	KES 12.17 per litre	KES 13.30 per litre
Cosmetics and Beauty products of tariff heading No. 3303, 3304, 3305 and 3307”	10%	15%
Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%	KES 121.85 per litre	KES 134 per litre
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	KES 208.20 per litre	KES 229 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%	KES 278.70 per litre	KES 335.30 per litre
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	KES 13,906.04 per Kg	KES 15,296.60 per Kg
Cigarette with filters (hinge lid and soft cap)	KES 3,447.61 per mille	KES 3,825.99 per mille
Cigarettes without filters (plain cigarettes)	KES 2,502.74 per mille	KES 2,752.97 per mille
Other manufactured tobacco and manufactured tobacco substitutes; “homogenous” and “reconstituted tobacco”; tobacco extracts and essences”	KES 9,734.45 per Kg	KES 10,707.88 per Kg

Excise Duty

a) Increase in the rate (Continued):

Item	Old rate	New rate
Imported sugar confectionary of tariff heading 17.04	KES 36.74 per kg	KES 40.37 per kg
White chocolate, chocolate in blocks, slabs or bars of Tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00	KES 200 per kg	KES 242.29 per kg
Jewellery of Tariff heading 7113 and imported jewellery of Tariff heading 7117”	10%	15%
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”	KES 1,200 Per Kg	KES 1,500 per Kg

Implication: The increase of excise duty is part of the tax base expansion though the increase may negatively impact the consumption of these product largely because of the expected increase in their costs.

The increase is also aimed at curtailing consumption of goods that are considered harmful to health. However, most of these items have inelastic demand and as such the increase in price of the products in question may therefore not achieve the intended objectives.

Effective Date: 01 July 2022

Excise Duty

b) Introduction of excise duty on new products and services

Item	Old rate	New Rate
Electronic cigarettes and other nicotine delivery devices	N/A	40%
Liquid nicotine for electronic cigarettes	N/A	KES 70 per ml
Imported articles of plastics of HS code 3923.90.90	N/A	10%
imported potatoes and potato product of HS Code 0710.10.00, 2004.10.00 and 2005.20.00	N/A	10%

Implication: increase in import duty for plastic items aims to further discourage use of plastics following the ban on use of polythene bags, and is a move to conserve the environment.

Increase in import duty for potatoes is a move to widen the government's revenue and protect the local farmer from competition.

Introduction of tax on these nicotine products intended for inhalation without combustion is to keep pace with the changing trends in the tobacco industry to diversify from traditional cigarette products.

Proposed Effective Date: 01 July 2022

Excise Duty

c) Exemptions: The Act has amended the Second Schedule as below:

	Old rate	New rate
Neutral spirits imported by registered pharmaceutical manufacturers	KES 278.70 per Litre	Exempt
Locally manufactured passenger motor vehicles	20% to 35% dependent on cc rating and fuel	Exempt

The exemption of neutral spirits are subject to approval by the Commissioner respectively.

- **Neural spirits:** Providing affordable healthcare is one of the Big 4 Agenda’s. As such, the exemption of Neural spirit, used in the manufacture of local pharmaceutical products, is likely to lower the cost of manufacturing and will allow Kenyans to have increased access to quality medical care. Its also intended to encourage investment in this crucial sector of the economy.

- **Locally manufactured passenger cars**: This may see a reduction in the cost of locally manufactured passenger vehicles. However, this is linked to a condition that at least 30% of the parts are to be designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

Proposed Effective Date: 01 July 2022

Miscellaneous Fees and Levies Act

Miscellaneous Fees and Levies Act

Enacted Provisions

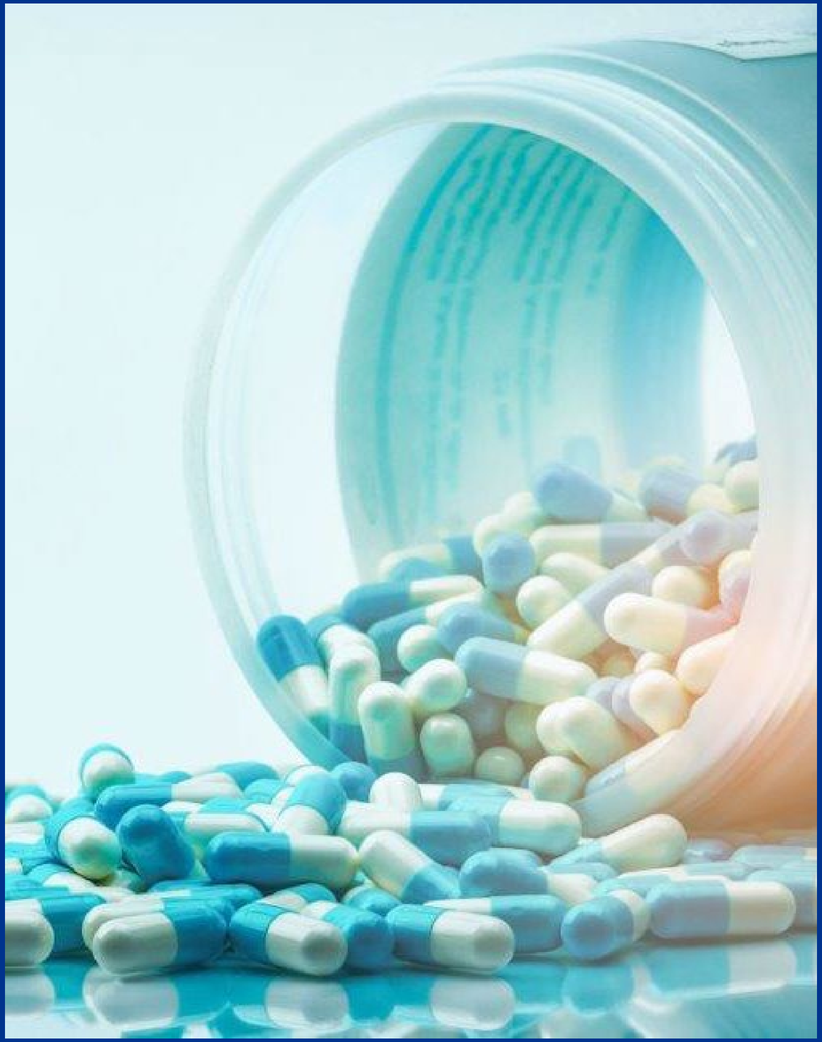
Introduction of export levy

HS Code	Description	New Rate	Old Rate
26.01	Iron ores and concentrates, Including roasted iron pyrites	USD 175 per tonne	0

Implication: This will discourage export of iron ores, concentrates including roasted iron pyrites. Taxpayers in the respective sectors should note this as it directly affects their export price. This is meant to discourage export of the products and promote local production of steel.

Effective date: 1 July 2022

Miscellaneous Fees and Levies Act



Adjustment for inflation

The Act has changed export levy of the goods in Part I for the adjustment for inflation from the beginning of every financial year to a date not later than the 1st October of every financial year.

Implication: This will align the adjustment for inflation with the Excise Duty. This will ensure uniformity and certainty of the expected inflationary adjustments on excisable products..

Effective date: 1 July 2022

Exemption from IDF and RDL

The Act had exempted from Import Declaration Fees (IDF) and Railway Development Levy (RDL), inputs and raw materials imported by manufacturers of pharmaceutical products upon the recommendation of the CS responsible for health.

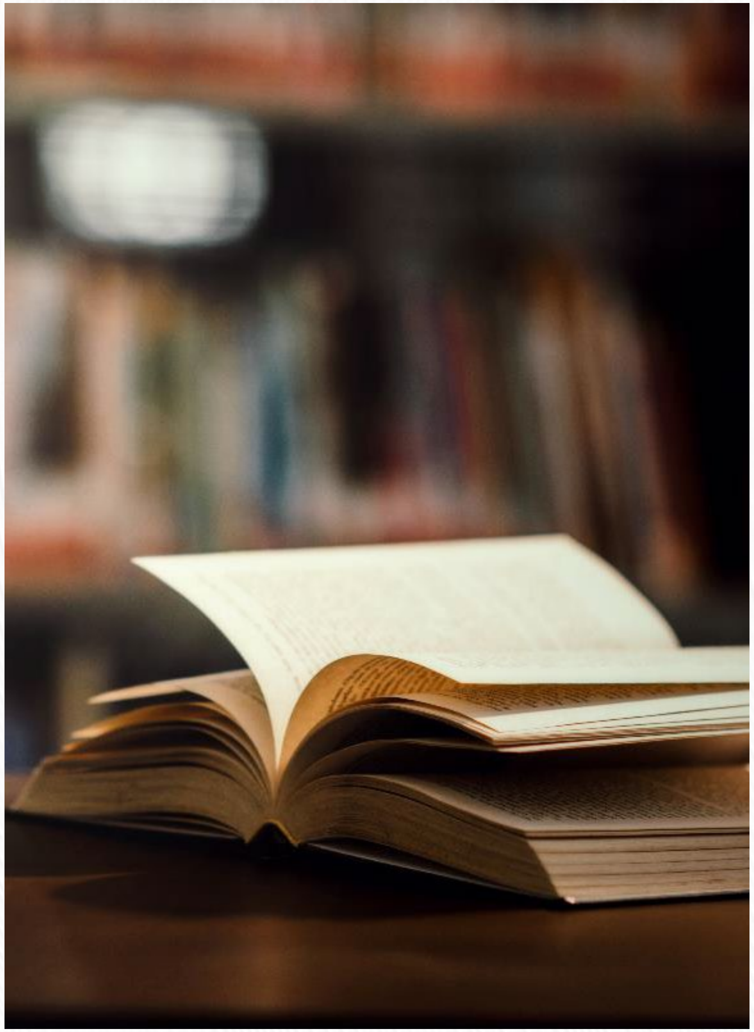
Implication: The exemption from IDF and RDL on inputs imported by manufacturers of pharmaceutical products, may lower the cost of pharmaceutical products and allow Kenyans to have increased access to quality medical care. It is also intended to encourage investment in this crucial sector of the economy and hopefully fast track achievement of universal healthcare coverage agenda.

Effective date: 1 July 2022

KPMG

Tax Procedures Act

Tax Procedures Act



Requirement for trusts to notify the Commissioner about changes

Enacted provision: The Act provides that trusts, whether in business or not, should notify the Commissioner about any changes in identity, address of the trustees or beneficiaries of the trust.

Previously, trusts were still required to report change in particulars to the Commissioner but the TPA had not specified if this was applicable to those not carrying on business.

Implication: This will likely result to more scrutiny by KRA in trusts, particularly dormant ones and those used purely for investment or charitable purposes. KRA will be interested in knowing whether there is any tax collectible on change in trusts even if the trust is not in business.

Effective date: 1 July 2022

Amendment of VAT assessments

Enacted provision: The Act provides that in instances where the Commissioner amends an assessment relating to VAT, the input tax shall be allowable for a deduction within six (6) months after the date of supply.

Implication: This addresses a gap in the TPA on amended assessments and aligns with the VAT Act provisions in relation to claiming of input tax.

Effective date: 1 July 2022

Tax Procedures Act

Security on property for unpaid tax

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

Previously, only land and buildings qualified as security. Commissioner now has powers to dispose off the property used as security if the taxpayer does not settle the tax liabilities within 2 months of being notified by the relevant government Registrar.

However, where a payment plan has been agreed between the taxpayer and the Commissioner on how to settle the tax, the liability should be settled within the agreed payment plan before the notification by the Commissioner is lifted.

Implication: This will enhance recovery of tax arrears by KRA due to the wider portfolio of assets that can be used as security/collateral.

The introduction of the settlement plan is likely to be a relief for the taxpayer as the Commissioner is barred from disposing off the property where a payment plan has been agreed and adhered to.

Effective date: 1 July 2022

Refund of overpaid tax

Enacted provision: Taxpayers can now apply for overpaid tax, including overpaid instalment tax to be offset against future tax liabilities. Any outstanding tax after the offsetting will accrue interest and penalties. This applies to situations where the taxpayer has overpaid instalment tax.

The Commissioner has ninety (90) days to determine the application for refund and ascertain whether or not there was overpayment of tax, failure to which the application is deemed approved.

Taxpayers may appeal to the TAT within 30 days of the Commissioner's decision to either refund overpaid tax or apply it against future liabilities.

Implication: The additional options will help KRA address cashflow issues around refunds due to tax overpayments. Taxpayers have an option of having the overpaid tax (including overpaid instalment tax) applied against future liabilities instead of waiting for two years for a refund.

The inclusion of a 90-day limit for the Commissioner to review and determine the application will provide the much needed certainty to taxpayers. Additionally, this will alleviate taxpayers cash flow constraints and ease the cost doing business in Kenya.

Effective date: 1 July 2022

Tax Procedures Act

Refund of tax paid in error

Enacted provision: The Commissioner can refund any tax paid in error if satisfied that the amounts should not have been paid.

The procedure for refund for tax paid in error will be similar to that for overpayments.

Refunds also apply where tax paid in error is on zero-rated or exempt supplies due to circumstances beyond taxpayer's control.

Implication: This is a welcome provision for taxpayers as they can apply for tax paid in error and utilise the same to alleviate their financial business obligations.

Effective date: 1 July 2022

Objection to tax decisions

Enacted provision: The Commissioner should notify the taxpayer within 14 days if notice of objection is not validly lodged. Previously, the Commissioner was required to notify the taxpayer immediately.

The application for extension of time to lodge notice of objection should be decided by the Commissioner within 14 days

The Commissioner will be expected to issue an objection decision within 60 days from the day of receiving a valid objection by a taxpayer.

If the Commissioner does not issue the objection decision within 60 days , the taxpayer's objection is deemed allowed.

Taxpayer may appeal to the TAT within 30 days of objection decision.

Implication: The 14 days timeline for communicating whether a notice of objection is valid and to consider a request for extension of time is welcome.

The 60 days within which the Commissioner should make an objection decision is also welcome. However this time, taxpayers should be careful to lodge valid objections otherwise the 60 days' period will not apply.

Effective date: 1 July 2022

PIN requirement for registration of a trust

Enacted provision: The First Schedule to the TPA has been amended to include registration of a trust as a transaction that requires a PIN.

Implication: The revenue authorities will pay greater attention to trusts. This may due to the fact that trusts are increasingly being used as a means to transfer and hold assets by wealthy individuals and corporations to avoid tax.

Effective date: 1 July 2022

Other Acts

Other Acts

Evidence Act – Privilege to withhold information

Enacted provision: The amendment has widened the revenue officers' privilege of not disclosing their sources of information relating to commission of an offence. The privilege has been extended to information obtained under all tax laws in Kenya.

In addition, the definition of a revenue officer has been widened to be "any officer employed in or about the business of any public office for the collection of public revenue".

Implication: If used well, KRA can take advantage of their confidential sources to collect more revenue. However, this has the potential to be abused by the revenue authorities while issuing assessments to taxpayers from unreliable sources. Taxpayers can however apply to court to cross examine revenue officers to verify the accuracy of the information that has been used to raise assessments.

Effective date: 1 July 2022

Unclaimed Financial Assets Act

Incentive to report unclaimed assets

Enacted provisions: The Unclaimed Financial Assets Act has been amended to allow waiver of penalties, fines and audit fees in justifiable circumstances .

The applicable penalties and interest have also been capped to the value of the asset. On the other hand, the authority now has powers to recover the penalties as civil debts.

Further, there is Voluntary Disclosure Program for a period of 12 months from 1 July 2022. The program is meant to encourage the public to disclose and deliver unclaimed assets to the authority . The relief applies to assets held before 30 June 2022. Beneficiaries of the program will have their penalties and interest waived.

Implication: The public should take up the opportunity to report unclaimed assets to the Unclaimed Financial Assets Authority with the above incentives.

Effective date: 1 July 2022

Capital Markets Act – Definition of investment advisor

Enacted provision: The following has been deleted from the definition of an "investment advisor":

- "any person (other than a bona fide officer, director, trustee, member of an advisory board or employee of a company as such) who, for remuneration pursuant to a contract or arrangement with a client, undertakes on behalf of the client (whether on a discretionary authority granted by the client or otherwise), the management of a portfolio of securities for the purpose of investment, where the total portfolio does not exceed the amount prescribed by the Authority from time to time."

Implication: The deletion of the above section means that the scope for investment advisers has been reduced. However, other licensees under the Capital Markets Act such as collective investment schemes/fund managers can provide the service.

Effective date: 1 July 2022

KPMG

Other Acts

Capital Markets Act - Licensing requirements

Enacted provision: The Capital Markets Act has been amended to allow for legal entities prescribed under CMA regulations to apply for licenses issued by CMA. Previously, only companies incorporated under the Companies Act were allowed to apply.

The Act has also been amended to expand the number of people who could be vetted for licensing. Previously, only a director or chief executive could be vetted. However, the CMA can now vet any person who directs or manages the business of the prospective licensee.

Implication: This will open licencing by the CMA to other business structure such as partnerships. The requirements for vetting will increase the number of people who are expected to be vetted potentially increasing the bureaucratic bottleneck.

Effective date: 1 July 2022

Clean up –Insurance Act

Enacted provision: Section 10 of the Insurance Act has been amended to delete the reference to section 21 therein and substitute it with section 21 A.

Implication: Section 21 A was introduced by Finance Act, 2021. The Section deals with closed funds and the amendment to section 10 (4) and (8) is to give the Authority the power to penalize an insurer who is found to have disposed of or misappropriated assets from a closed fund contrary to the provisions of section 21A.

Effective date: 1 July 2022

Statutory Instruments Act

Term for tax related regulations

Enacted provision: Tax-related statutory instruments will be exempt from automatic expiry for a period of twenty-four months with effect from 25 January 2023. The envisaged instruments are those under Income Tax Act, Stamp Duty Act, Value Added Tax Act,2013, Tax Appeals Tribunal Act, 2013, Excise Duty Act 2015 and Tax Procedures Act, 2015.

Implication: This will ensure continuity of the tax administration and revenue collection system, especially for regulations that were enacted prior to 2013 with the 10 year period set to lapse in 2023.

Effective date: 25 January 2023

KPMG

Other Acts

Retirement Benefits (Deputy President and Designated State Officers) Act

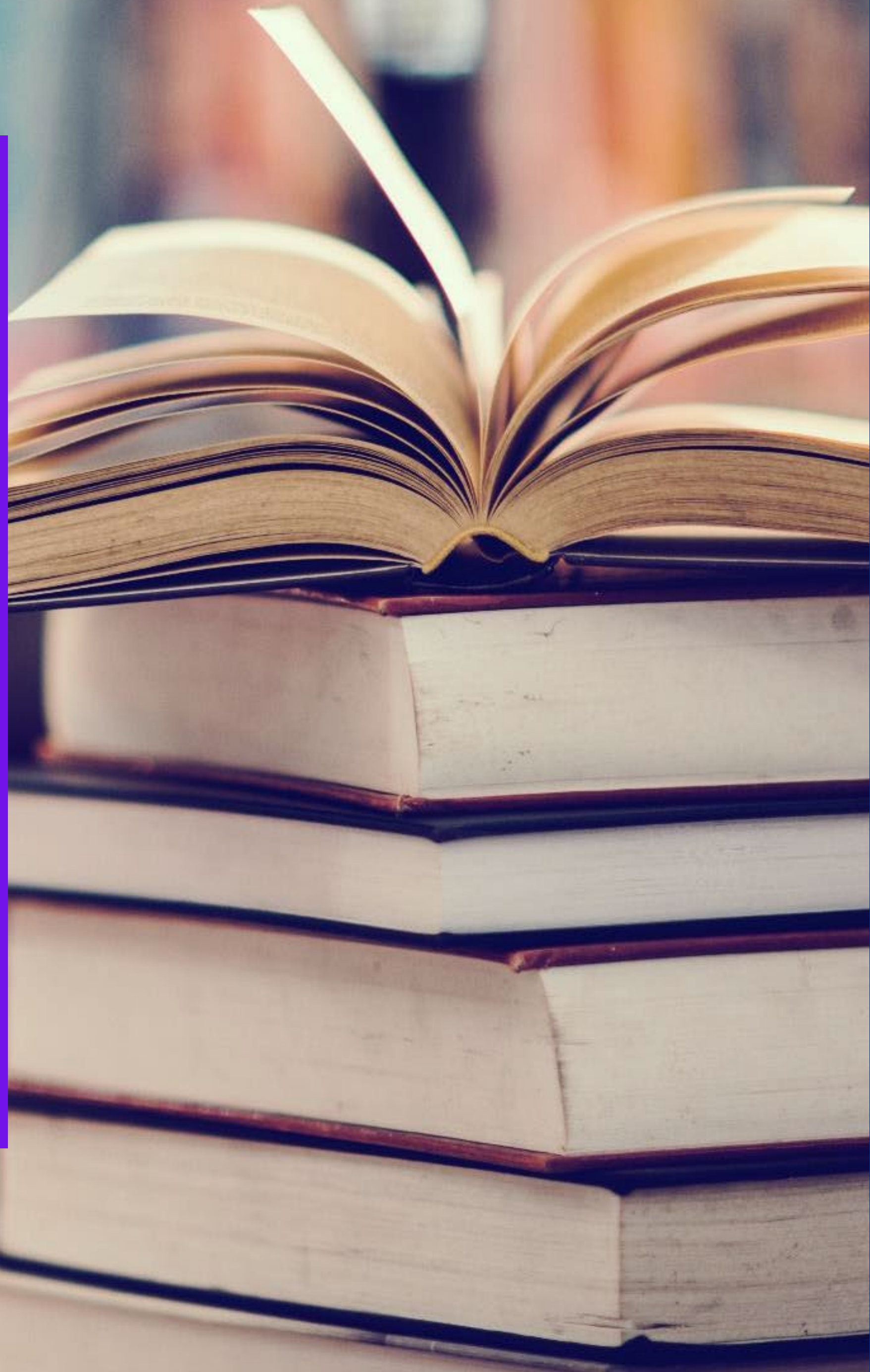
Better administration of retirement benefits for the Deputy President and designated state officers

Enacted provision: The Finance Act has amended Section 13 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015. Certain retirement benefits for the Deputy President, Vice President and Prime Minister will be administered through the Office of the President, those for the Speaker through Parliamentary Service Commission and those for the Chief Justice and Deputy Chief Justice through the Judiciary Fund. The entities are also required to give guidelines for computing the benefits. The benefits for these officers are currently administered by Cabinet Secretary, National Treasury.

Implication: The amendments will provide better administration of the envisaged benefits for the Deputy President, Vice President, Prime Minister, Speaker, Chief Justice and Deputy Chief Justice. The Office of the President, the Parliamentary Service Commission and the Judiciary Fund will have a chance to prepare estimates for the retirement benefits in time for approval in Parliament and harmonise the benefits for the retired state officers once they develop guidelines.

Effective date: 1 July 2022

New Provisions not in Finance Bill, 2022



Corporation Income Tax – New provisions

Exemption from tax

Enacted provision: The following income will be exempted from income tax under the First Schedule to the ITA:

a) Deemed interest in respect of an interest free loan advanced to a company undertaking the manufacture of human vaccines.

b) Payments made to non-resident service providers not having a permanent establishment in Kenya in respect of services provided to a company undertaking the manufacture of human vaccines.

c) Compensating tax accruing to a company undertaking the manufacture of human vaccines.

d) Dividends paid by a company undertaking the manufacture of human vaccines to any non-resident person.

e) Income of a company undertaking the manufacture of human vaccines.

f) Dividends paid by Special Economic Zone enterprises, developers and operators licensed under the Special Economic Zones Act.

g) Dividends paid by Special Economic Zone enterprises, developers and operators to any non-resident person.

Implication: The above exemption from tax are primarily geared towards providing an inviting incentive to investors seeking to invest in the health sector and special economic zones in line with the Government's Big4 Agenda.

Effective date: 1 July 2022

Taxation of businesses under a special operating framework

Enacted provision: The provision provides that the following persons will be subject to tax at the rate specified in the special operating framework with the Government:

a) Person(s) engaged in business under a special operating framework arrangement with the Government;

b) Company incorporated for purposes of undertaking the manufacturer of human vaccines;

c) Person(s) whose capital investment is at least ten billion shillings.

Implication: The enactment of the above provision provides clarification that certain persons may apply and qualify for reduced rates of tax under a special operating framework. Additionally, this provision provides a legal basis for imposition of special rates of tax provided by the Government.

Effective date: 1 July 2022

Corporation Income Tax – New provisions

150% Capital Allowances is back!

Enacted provision: The Act now provides for capital allowance of 150% where the cumulative investment value for the preceding four years from the date that this provision comes into force or the cumulative investment for the succeeding three years outside Nairobi City County or Mombasa County is at least two billion shillings.

Implication: This will promote investment outside Nairobi City County and Mombasa County in a bit to promote even industrialization across the country and reduce congestion as well constrain of resources in these two counties.

Effective date: 1 July 2022

Investment Deduction on bulk storage and handling facilities supporting SGR operations

Enacted provision: Investments made before 31 December 2023 on the construction of bulk storage (100,000 metric tonnes and above) and handling facilities to support the Standard Gauge Railway operations will qualify for Investment Deduction of 150%

Implications: In our view, this provision allows more time for persons on the completion phase of such projects to enjoy huge capital allowance on the heavy investment made towards the construction of such facilities once they Commission them.

Effective date: 1 July 2022

Lower rate of tax for companies operating a carbon market

Enacted provision: The Act now brings to tax under the ITA income earned by a company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority. The applicable rate of tax will be 15% per cent for the first 10 years from the year of commencement of its operations, and its expected to revert to the applicable resident corporate tax rate of 30% thereafter.

Implication: The enactment of this provision that provide for the reduced rate of tax is aimed at encouraging the growth and participation in the carbon market exchange and subsequently reduce global warming.

Effective date: 1 January 2023

Income from shipping businesses

Enacted provision: The Act now provides for lower rate of tax for the income earned by a a company operating a shipping business in Kenya. The applicable rate of tax will be 15% per cent for the first 10 years from the year of commencement of its operations and the same will revert to the resident corporate tax rate of 30% thereafter.

Implication: This provision is likely to encourage investment in the shipping industry, which will in turn stimulate global commerce and spur foreign direct investment.

Effective date: 1 January 2023

Interest paid in respect of bearer bonds issued outside Kenya

Enacted provision: The applicable withholding tax for interest and deemed interest arising from a bearer bond issued to non-residents outside Kenya of at least 2 years duration, and interest, discount or original issue discount, shall be subject to a reduced withholding tax rate of 7.5% of the gross sum payable.

Implication: This move will ease the Kenyan government's efforts to raise funds for infrastructural projects, given that the reduced withholding tax rate will make such bonds attractive and lucrative in the international market.

Effective date: 1 January 2023

Excise Duty – New Provisions

a) Reduction or removal of excise duty

Item	Old rate	New rate
Imported Furniture of any kind used in offices, kitchen, bedroom and other furniture	25%	0%
Betting on horse racing	10% on both locally produced and imported	0%

Implications: Betting on horse racing has been excluded from excise duty on betting. This is aimed at encouraging the sport and popularising the sport in the country.

Removal of excise duty on furniture will encourage importation and thus this may have a negative impact on local manufacturers which is not in tandem with '*Buy Kenya, Build Kenya'* mantra.

Effective Date: 01 July 2022

Excise Duty – New Provisions

b) Introduction or increase of excise duty

Item	Old rate	New rate
Imported unsaturated polyester	10% on both locally produced and imported	10% on imports
Imported Alkyd	10% on both locally produced and imported	10% on imports
Imported Emulsion VAM	10% on both locally produced and imported	10% on imports
Imported Emulsion styrene Acrylic	10% on both locally produced and imported	10% on imports
Imported Homopolymers	10% on both locally produced and imported	10% on imports
Imported Emulsion BAM	10% on both locally produced and imported	10% on imports
Imported ready to use sim cards	0%	KES 50 per piece
Fees charged by digital lenders	0%	20%
imported cellular phones	0%	10%

Excise Duty – New Provisions

b) introduction or increase of excise duty - continued

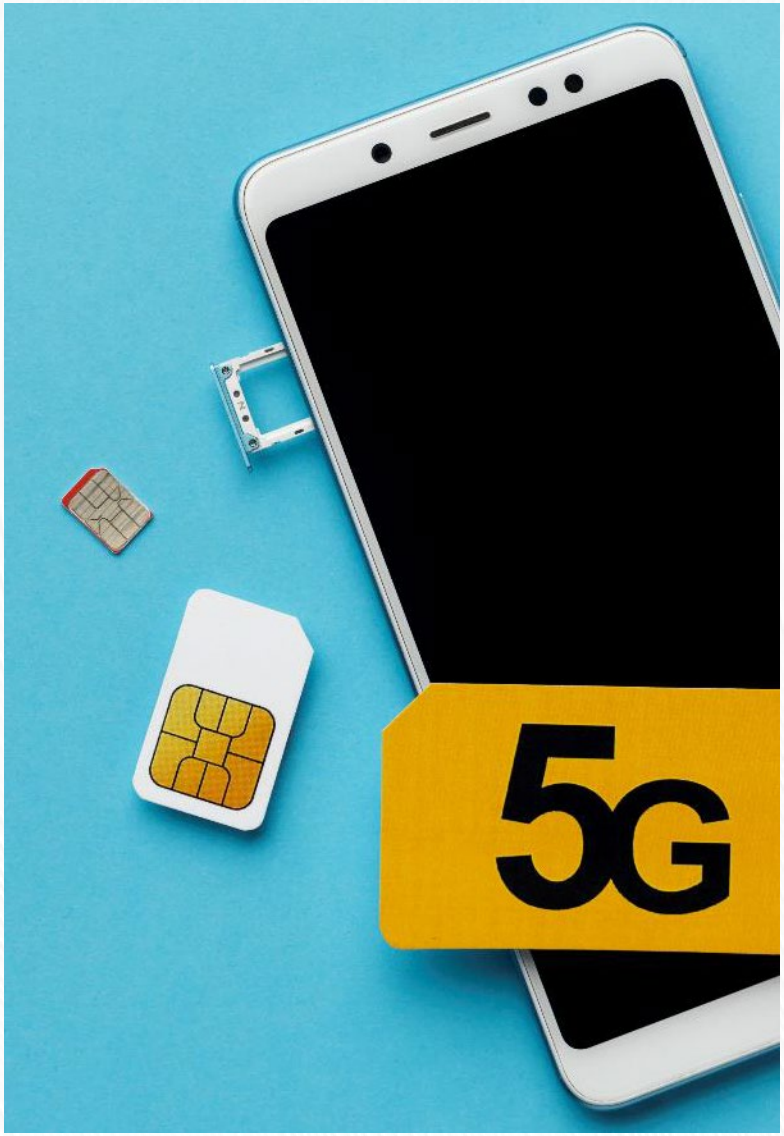
Implications:

a) Imposition of excise duty on imported ready to use sim cards and mobile phones will increase of cost of communication through mobile telephony.

b) To take advantage of the mushrooming digital lending business and in a bid to enhance the tax base, the Government has introduced excise duty at the rate of 20% on fee charged by digital lenders. This will increase the cost of digital lending.

c) Excise duty on imported unsaturated polyester, alkyd, emulsions and homopolymers, is a move by the Government to widen its revenue base as well as protect the local industries.

Effective Date: 01 July 2022



Miscellaneous Fees and Levies Act
New provisions

1) Exemption from Import Declaration Fee and Railway Development Levy

(a) Raw materials and intermediate products imported by manufacturers upon recommendation to the Commissioner by the CS responsible for matters relating to industry.
(b) Input for the construction of houses under an affordable housing scheme upon recommendation to the Commissioner by the CS responsible for matters relating to housing.
(c) Goods imported for use in the construction and maintenance of human vaccine manufacturing plants approved by the CS for the National Treasury on recommendation of the CS responsible for health.
(d) Goods, inputs and raw materials imported by a company which is engaged in business under a special operating framework arrangement with the Government; and incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least ten billion shillings subject to approval of the CS for the National Treasury, on recommendation of the CS for health

Implication: The Commissioner General of KRA will now have the authority to approve the lower rates of IDF and RDL for manufacturers and developers of affordable housing which previously was done by the CS. This will likely speed up the approval of lower rates for IDF and RDL through reduction of the required administrative processes.

2) Exemption of Additional 2.5% Import duty on currency

Currency notes and coins imported by the Central Bank of Kenya from an export processing zone enterprise will be exempt from import duty.

Implication: The Central Bank of Kenya (CBK) will pay a less amount of taxes on currency. Hopefully, this will reduce the cost of replacing currency by CBK which is a critical cog of the economy.

Effective date: 1 July 2022

Tax Procedures Act – New Provisions

Roads Maintenance Levy Fund Act- Expanded scope for Road Maintenance Fund Levy

Enacted provision: Use of the roads maintenance levy has been expanded to also fund roads approved by the National Assembly. Initially, the levy was only to be used for the Road Annuity Fund established under the Public Finance Management Act, 2012.

Implication: This is a welcome move that may lead to expansion and improvement the Kenya's road network infrastructure through additional road projects approved by the National Assembly.

Effective date: 1 July 2022

Betting Tax – Exemption for Horse racing

Enacted provision: The Betting, Lotteries and Gaming Act has been amended to exempt horse racing gaming revenue from betting tax of 15%.

Implication: The amendment may attract more punters to divert their stakes to horse racing to save on the betting tax levied on other games.

Effective date: 1 July 2022

Application of agency notices

Enacted provision: Person or entity served with an agency notice by KRA now has 14 days to notify Commissioner if they cannot comply with notice due to lack of funds. Previously, the notification period was 7 days.

The TPA has also been amended to compel the Commissioner to serve the agency notice to the taxpayer when serving the agent.

The amendments have also prohibited KRA from issuing an agency notice unless the assessment is confirmed through an Objection Decision and the taxpayer has defaulted in lodging an appeal to the Tax Appeals Tribunal within the prescribed timelines in the TPA.

Implication: The amendments to the issuance of agency notices is a welcome relief to taxpayers. KRA have recently ramped up the use of agency notices as an aggressive tactic to collect unpaid tax. The new changes will curtail abuse of seemingly excessive power by the revenue authority in issuing agency notices.

Effective date: 1 July 2022

Tax Procedures Act – New Provisions

Tax Procedures Act- Withholding VAT exemption

Enacted provision: The Tax Procedures Act is amended to provide withholding VAT exemption for registered manufacturers with investment of over Kes 3 billion in the preceding three years from the commencement of the Finance Act, 2022 (i.e. on 1 July 2022.)

Implication: The amendment is a further adjustment on withholding VAT provisions after changes in recent years that led to exclusion of zero-rated supplies from its purview and reduction of the rate to 2%. Going forward manufacturers who have invested over Kes 3 billion between 1 July 2020 and 1 July 2022 will be exempted from withholding VAT.

Effective date: 1 July 2022

Stamp Duty Act- Exemption of instruments executed in favour of mortgage refinance companies

Enacted provision: Instruments executed in favour of a mortgage refinance company are now exempted from stamp duty.

Implication: The amendment could be beneficial to Kenyans by reducing the costs for mortgage refinancing.

Effective date: 1 July 2022

Allocation of funds – Kenya Roads Board Act

Enacted provision: The Kenya Roads Board will allocate fifty percent (50%) of allocated funds to development, rehabilitation and maintenance of the road network.

The remaining 50% of allocated funds may be set aside by Board as security for borrowing funds necessary to finance maintenance, development and rehabilitation of roads. The Board is to obtain approval for this from the Cabinet Secretary of the National Treasury..

Implication: The amendments are a continuation to the changes introduced by the Kenya Roads Board (Amendment) Act, 2019. Previously, the Act had not provided for Funds to be set aside for purposes of obtain additional funding for roads.

Effective date: 1 July 2022

Extended Timelines for Reports to Parliament

Enacted provision: The Finance Act 2022 has amended the Statutory Instruments Act to allow the National Assembly 28 sitting days to consider and make a resolution for notices dealing with taxes, levies or fees, or having the effect of imposition of a charge on a public fund or variation or repeal of such charge.

Implication: The amendment will give the National Assembly more time on the above notices since there has been invalidation of tax laws based on the timelines above. Previously, the National Assembly was allowed to extend the time by a period not exceeding twenty-one days.

Effective date: 1 July 2022

Proposals in Finance Bill, 2022 that were dropped

Corporation Income Tax – Excluded Provisions

Deleted Provisions of the Finance Bill 2022

Relief for beneficiaries of income from registered trusts

Retained provision: 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 ITA.

In the case of a registered trust, the exemption from tax will continue to apply to:

a) any amount that is paid out of the trust income on behalf of any beneficiary and is used exclusively for the purposes of education, medical treatment or early adulthood housing;

b) income paid to any beneficiary which is collectively below KES 10 million 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 to the ITA.

Implication: The above incomes paid to beneficiaries will remain exempt from taxation.

Income of a registered family trust

Retained provision: The principal sum of registered family trusts remains exempted from taxation.

Implication: This will continue to encourage formation of family trusts, which are important vehicles for succession planning.

DST rate retained at 1.5%

Retained provision: Despite the proposal to increase the rate of digital service tax rate from 1.5% to 3% of the gross transaction value, the applicable rate remains at 1.5% of the gross transaction value.

Implication: The cost of increasing the rate of DST would have been ultimately pushed to consumers, hence the same was not enacted.

Tax Procedures Act – Excluded Provisions

Objection to tax decisions

- **Deleted provision**: The Bill proposed to amend TPA to prevent taxpayers from considering an objection allowed if the Commissioner did not provide a decision within 60 days.

- **Implication**: This will be a relief as the proposal would have left taxpayers in limbo in the event the Commissioner did not meet the prescribed timelines to provide an objection decision.

Requirement to pay 50% of disputed tax upfront on appeal

- **Deleted provision**: The Finance Bill contained a proposal for taxpayers to deposit 50% of the tax in dispute with the Central Bank prior to appeal to the High Court.

- **Implication**: This was likely to result to cashflow constraint for taxpayers considering the time it takes to hear appeals at the High Court, Court of Appeal and Supreme Court, where applicable. The 50% deposit would have been unfair to taxpayers as it would have denied them the right to their property and presumption of innocence for fair administration of justice until a matter is heard and determined.

Excise Duty – Excluded Provisions

a) Increase in rates

	Old rate	Proposed rate
Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices	KES 6.03 per litre	KES. 6.60 per litre
Powdered Beer	KES 121.85 per Kg	KES 134 per Kg
Motorcycles of tariff no. 8711 other than motorcycle ambulances and locally assembled motorcycles	KES 12,185.16 per unit	KES 13, 403.64 per unit
Betting: Wager or stake	7.5%	20%
Gaming: Wager or stake	7.5%	20%
Prize competition	7.5%	20%
Lottery (excluding charitable lotteries)	7.5%	20%

b) Introduction of excise duty on new products and services

	Old rate	Proposed rate
Ice cream and other edible ice whether or not containing cocoa of tariff number 2105.00.00	**N/A**	15%
Fees charged by all television stations, print media, billboards, and radio stations for advertisements of gambling, gaming and alcoholic beverages	**N/A**	15%

Implication: The government put aside the increase of excise duty on some existing commodities and introduction of new items in the excise duty bracket.

Excise Duty – Excluded Provisions

c) Increase in the scope within the First Schedule to the Excise Duty Act, 2015:

Glass bottles

The Finance bill had proposed to introduce excise on Glass bottles whether imported or manufactured locally (excluding imported glass bottles for packaging of pharmaceutical products) and the proviso thereto and substituting the tariff description “Glass bottles (excluding glass bottles for packaging of pharmaceutical products).

Implication: The move puts at an advantage local manufacturers of bottles and manufacturers of glass bottles in the EAC who will not have an excise duty cost compared to their international competitors.

d) Second Schedule to the Excise Duty Act, 2015 :Exemption from excise duty

There was a proposal to exempt hatching eggs subject to approval by the Cabinet Secretary.

Implications: As this proposal was not enacted it will have undesired effects in the hatching business. The cost of eggs for hatching will remain high consequently increasing the cost of poultry and eggs which in the recent past has been on the rise.

Miscellaneous Fees and Levies Act Proposed, not adopted

Introduction of export levy

HS Code	Description	New Rate	Old Rate
4101.20.00, 4102.21.00, 4102.29.00, 4103.20.00, 4103.30.00, 4103.90.00, 4104.19.00, 4301.60.00, 4101.40.00, 4101.50.00, 4101.90.00, 4102.10.00, 4301.10.00, 4301.80.00, 4301.90.00, 4302.11.00, 4302.19.00, 4302.20.00, 4302.30.00	Export levy on the raw hides, skins and furskins	50% of value of the goods or USD 0.32 per Kg (whichever is higher)	80% or USD 0.52 per Kg (whichever is higher)

Implication: May encourage smuggling of exports of raw hides, skins and furskins..

KPMG

Contact us

Peter Kinuthia
Partner, and Head of Tax and
Regulatory Services
KPMG East Africa

T: +254 709 576 215
E: pkinuthia@kpmg.co.ke

Clive Akora
Partner, Tax and
Regulatory Services
KPMG East Africa

T: +254 709 576 245
E: cakora@kpmg.co.ke

Disclaimer

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate andtimely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.