



Budget brief

**Building back better - Strategy for resilient
and sustainable economic recovery**



June 2021

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Budget Overview

The Cabinet Secretary for the National Treasury (CS) presented the 2021/2022 budget under the theme: ***“Building back better: Strategy for resilient and sustainable economic recovery and inclusive growth.”*** The budget focus is on recovery following the impact of Covid 19 and the resulting containment measures. The budget aims at addressing concerns arising from the difficulties in accessing Covid 19 vaccines, high cost of living, unemployment, stimulating private sector growth and the rising public debt. The budget comes against a backdrop of projected global economic recovery, despite concerns that emerging Covid 19 variants could hamper the planned reopening of the economy.

The fiscal policy supporting the financial year 2021/2020 and the medium-term budget is designed to support economic recovery and reduce fiscal deficit. The policy aims at mobilizing revenues through tax reforms in tax policy and administration. Thus, the 2021/22 budget targets revenue collection including Appropriations-in-Aid (AIA) of KES 2.04 trillion, equivalent to 16.4% of GDP, a growth from the estimated revenues of KES 1.89 trillion, equivalent to 16.8% of GDP in the financial year 2020/21. Of this, ordinary revenues in the financial year 2021/22 are projected at KES 1.78 trillion, equivalent to 14.3% of GDP. Total expenditures in the financial year 2021/22 are projected at KES 3.03 trillion (excluding debt repayments) or 24.5% of GDP from the estimated level of KES 2.79 trillion or 24.7% of GDP in 2020/21.

The recurrent expenditures in the financial year FY 2021/22 will amount to KES 2.0 trillion or 16.2% of GDP. Due to shortfall in revenues, the government will once again tap into the credit markets to finance the budget deficit which now stands at 976.2Bn equivalent to 7.5% of the GDP. This fiscal deficit is lower than the 976.2 equivalent to 8.7% of the GDP in 2019/2020 budget. The deficit will be financed through net external financing of KES 271.2Bn equivalent to 2.2% of GDP and net domestic financing of KES 658.5 equivalent to 5.3% of GDP. Indeed, the cost of financing the national debt consumes a significant portion of tax revenues, leaving the government with limited options for financing development projects.

“Building back better: Strategy for resilient and sustainable economic recovery and inclusive growth.”



Credit support to micro,small and medium enterprises (MSMEs)

The government operationalised the credit guarantee scheme last year by providing seed capital of KES 3 billion to de-risk lending to MSMEs. This year, the government has committed an additional KES 2billion with the aim of ultimately raising the capital in the scheme to KES 10Bn. Through various incentives the banking sector disbursed over KES 20.8Bn to support MSMEs. Further, the government through the Central Bank of Kenya is in the process of introducing legislation to provide for licencing of digital credit service providers, with the aim of curbing predatory conduct.

Investments and reforms in key sectors of the economy

The government focussed on the livestock sector through reviving of the Kenya Meat Commission. There are plans to set up a meat processing plant in Lamu to provide ready market for livestock as well as increase income for farmers through enhancement of the meat value chain. There was focus on increased fish production through refurbishment of Liwatoni fishing complex and setting up a new fish processing plant in Lamu aimed at promoting export of fish. Additionally, the government has stepped up investment in the Land Sector through the National Program of Land Titling and Digitization of Land records. The government will also focus on the textile, leather and automobile industries as key targets for investment to create environment opportunities. This is in addition to the investments in the special economic zones in Dongo Kundu, Naivasha and Kisumu.

Structural reforms

The government has also proposed several structural reforms aimed at improving the business environment, increasing efficiency in public service delivery and strengthen accountability and transparency in public finance management. These include:

a) Procurement Reforms

The Public Procurement and Asset Disposal Regulations, 2020 came into effect in July 2020. This now makes it easier for procuring entities to meet the specified requirements of bilateral and multilateral agreements on technology and knowledge transfer, local content and employment quotas etc. With effect

from 1 July 2021 the government will decentralize procurement of ICT equipment and related services to various Ministries, Departments and Agencies to facilitate access by Micro, Small and Medium Enterprises.

b) E-Government Procurement

The government seeks to automate all public procurement processes, including functional and technical requirements through an end-to-end electronic procurement system. The government has put a deadline of 31 December 2021 to roll out the electronic government procurement system and discontinue manual procurement processes. The government aims to realize savings, increase efficiency, reduce operational costs and enhanced transparency and accountability through this initiative.

c) Framework Contracting

The government introduced the Public Procurement and Asset Disposal (Amendment) Bill, 2020 that proposes changes to the contracting framework that will support local contractors in undertaking construction of infrastructural projects. One of the changes proposed by the Bill is to allow award of a contract to multiple bidders which would open the door to local firms.

d) State Corporations Reforms

Due to the adverse impact of COVID-19, the government will explore targeted reforms to strengthen state institutions, including public universities. While the government will continue to provide support to strategic institutions, many of these will be restructured to ease the fiscal pressure on government.

e) Pending Bills

The government has directed all government Ministries, Departments and Agencies and the County Governments to clear all their pending bills by 30th June 2021. This has been a recurring problem that has seen payments excessively delayed to businesses who provide services to the National and County Governments. This is a welcome move for businesses whose liquidity has been significantly affected by the delayed payments. However, the government has made similar commitments over the last three years without conclusively resolving the issue of pending bills.



To further drive the point home, the CS requested Parliament to assist in enforcement of Article 225 of the Constitution of Kenya which provides for the national government to temporarily stop transfers to County Governments that persistently fail to comply with the directive to clear pending bills.

Financial sector stability and development

“The National Treasury recently established the Nairobi International Financial Centre Authority which is expected to publish within 6 months, a framework for attracting investments and innovative financial services.”

The financial sector continues to make significant contributions to economic growth in Kenya with the commercial banks expanding their businesses in the East African region. The expansion is expected to enhance the trade and investment opportunities under the Africa Continental Free Trade Area.

During the COVID-19 Pandemic in March 2020, the banking sector successfully contributed to the pandemic mitigation measures through emergency measures to support business continuity by establishing digital channels and restructuring loans.

Capital markets

The government proposes to amend the Central Depositories Act, to allow for opening of omnibus investment accounts by persons investing on behalf of others in the securities market. This will allow both individuals and collective investment groups to invest in the government securities and listed securities.

Further, the government proposes to amend the Capital Markets Act to enable the Capital Markets

Tribunal to hear and determine appeals within 90 days. This will improve efficiency in the capital markets and ensure speedy dispute resolution.

By June 2022, together with the Kenya Bankers Association and other players in the industry, the government has proposed to establish an electronic over the counter secondary market platform for Government Securities. This will help in deepening the domestic debt market, improve pricing efficiency and transparency in securities trading thereby lowering yields and cost of credit in the economy.

Pension reforms- Reprieve for retired civil servants?

The National Treasury is re-engineering and upgrading the pensions system to provide real time pension services in all the Huduma Centres Country wide. It is expected that this will pave way for timely payment of pension benefits to retired public servants.

The CS has proposed to develop post-retirement medical regulations to allow members to make additional voluntary contributions to a medical fund. This will enable retirees to access the funds at retirement or transfer a portion of it to a medical insurance provider. Additionally, these regulations will provide regulation of these funds which have remained unregulated exposing members funds.

In 2020, the Finance Act amended the retirements benefits regulations to allow members use part of their accumulated benefits to purchase residential houses. In this budget, the government proposes to amend the mortgage regulations to allow members utilize up to 40 percent or maximum of KES 7.0 million of their accrued benefits to purchase a house under a tenant purchase.



Fulfilling the Big 4 Agenda

The “Big Four” Agenda implementation remains critical in supporting sustainable economic recovery and accelerating employment creation. The Government expenditure prioritizes supporting manufacturing activities, youth empowerment, enhancing health coverage, improving food security and living conditions through affordable housing. The key allocations for “Big Four Agenda” projects include:

- a) Universal Health Coverage - **KES 47.7 billion** for various drivers and enablers;
- b) Affordable Housing - **KES 13.9 billion** to the housing, urban development and public works sector;
- c) Increasing Manufacturing contribution to GDP – **KES 20.5 billion** to scale up reforms to encourage investments in the manufacturing sector to support and protect local industries; and
- d) Improving Food and Nutrition Security – **KES 60.0 billion** towards expanding irrigation schemes, support cereal enhancement programme, increase access to agricultural inputs, implement programmes to support smallholder farmers and promote the use of appropriate farming techniques.

The government continues to expand critical infrastructure in roads, railways, sea and airports to create an enabling environment to economic recovery. The key beneficiaries include the Nairobi Metropolitan Services, the Dongo Kundu Special Economic Zone, Railway Metro lines, SGR Phase II, LAPSET Project and Mombasa Port Development project.

In an effort to digitize the economy, the government has allocated funds for investment in government shared services, Digital Literacy Programme, Konza Data Centre and Smart City Facilities, rehabilitation of the National Optic Fibre Backbone Phase II Expansion Cable, installation and commissioning of Eldoret-Nadapal Fibre Optic Cable and rehabilitation of the Last Mile County Connectivity Network.

Stimulating tourism recovery, sports, culture, recreation and arts

In order to support the tourism, sports, culture and arts sectors, the government has proposed to allocate KES 15.0 billion for the Sports, Arts and Social Development Fund; KES 1.7 billion for the Tourism Fund; KES 643.0 million for Tourism Promotion Fund; and KES 90.0 million for refurbishment of the regional stadia.

This is aimed at boosting these sectors that have been adversely affected by the Covid 19 pandemic and containment measures.

Enhancing quality and relevant education

The outbreak of the Covid 19 pandemic in 2020 disrupted in person learning and led to closure to schools for 9 months. In order to recover lost time, the government proposes to set aside KES 202.8 billion to support programmes in the education sector. The proposed allocation will focus on free primary education, recruiting teachers and NHIF for secondary school students.



Income Tax

Expansion of tax rebate for apprenticeships

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

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

Proposed effective date: 1 January 2022

Removal of the “mining right” hurdle

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

Implications: This will enhance the investment in exploration activities due to the removal of the requirement to obtain a mining right which might, in the long run, lead to the discovery of minerals that would spur the country closer to the much desired economic independence.

Proposed effective date: 1 January 2022

Limitation of benefit on Double Taxation Agreements

Proposed provision: The new proposal provides that if an arrangement for relief from double taxation results in reduced tax being payable in Kenya by a person who is a resident of the other

contracting state, such benefit shall not accrue to the person if fifty percent or more of the underlying ownership of the person is held by a person or persons who are not residents of the other contracting state. Previously, the restriction would apply if fifty percent or more of the underlying ownership of the person is held by an individual or individuals who were not residents of the other contracting state.

Implication: In our view, the proposed amendment seeks to align with international best practices on beneficial ownership. This implies that an assessment of who the ultimate beneficial owner is, whether at individual or corporate level, should be carried out prior to applying the reduced tax rate or exemption as prescribed by the Double Taxation Agreement.

Proposed effective date: 1 July 2021

Move towards private electricity companies

Proposed provision: The Bill proposes to remove the current requirement that electricity must be supplied to the National Grid for the generation of the same to fall under the definition of “manufacture”, which is a prerequisite to qualify for investment deduction on equipment, machinery and buildings used in manufacture.

Implication: A person investing in electricity generation for private business use, or for sale to persons of their choice, will now qualify for investment deduction on qualifying costs.

Should the government licence private electricity companies, this will be a welcome move as it will eliminate the monopoly of electricity distribution hitherto enjoyed by the Kenya Power Company, thereby increasing competitiveness and according of better service to consumers.

Proposed effective date: 1 January 2022



Capital allowances claimable over shorter periods

Description	New* (%) - All on Straight Line (SL) basis
Investment Deduction	
Buildings used for manufacture*	50 for first year and 25 per year on residual
Hotel Buildings	50 for first year and 25 per year on residual
Hospital buildings*	50 for first year and 25 per year on residual
Petroleum or gas storage facilities*	50 for first year and 25 per year on residual
Educational building*	10
Commercial building*	10
Machinery used for manufacture	50 for first year and 25 per year on residual
Ships	50 for first year and 25 per year on residual

Description	New* (%) - All on Straight Line (SL) basis
Aircrafts	50 for first year and 25 per year on residual
Heavy earth moving equipment	25
Motor vehicle*	25
Computer & computer peripheral hardware, calculators, copiers	25
Furniture & Fittings	10
Telecommunications equipment	10
Filming equipment purchased by a local producer	25
Software	25

The only change is that deductibility currently applies on a reducing balance, while under the new proposal the allowances will be applied on a straight line basis. The applicable allowance rates do not change. This is a welcome move since it will accelerate the rate at which taxpayers can claim capital allowances.

Cost of land excluded from the qualifying cost and qualifying cost for saloon cars is KES 3,000,000 up from KES 2,000,000

Proposed effective date: 1 January 2022



Civil Works definition reinstated

Proposed provision: The new proposal defines civil works under the definition of manufacture to include:

- Roads and parking areas;
- Railway lines and related structures;
- Water, industrial effluent and sewage works;
- Communications and electrical posts and pylons and other electricity supply works; and
- Security walls and fencing.

Implication: The Tax Laws Amendment Act, 2020 overhauled the Second Schedule to the Income Tax Act but the new Second Schedule did not define civil works.

Civil works comprise a significant part of investment required to carry out manufacturing, and it's only fair that they should be included as part of the costs qualifying for investment deduction.

Proposed effective date: 1 January 2022

Aligning of capital allowance rate for machinery used in the extractive sector

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

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

Proposed effective date: 1 January 2022

Clarity on what qualifies as an Infrastructure bond

Proposed provision: The Bill proposes to define infrastructure bond to mean "a bond issued by the government for the financing of a strategic public infrastructure facility including a road, hospital, port, sporting facility, water and sewerage systems or a communication network

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

The new proposal also confirms the government's commitment towards improving facilities used for sporting activities and port facilities.

Proposed effective date: 1 July 2021

New thin cap ratio for licensee/contractor for mining/exploration

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

Implication: Contractors or licensees for mining and petroleum operations will now enjoy more favourable interest restriction terms. The upshot of this is that it will create room for such companies to use more debt to finance their operations.

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

Proposed effective date: 1 January 2022



Imposition of Income Tax – Businesses conducted over electronic networks.

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

The Bill proposes a new definition for a digital marketplace. A “digital marketplace” will mean an online platform which enables users to sell or provide services, goods or other property to other users.

Implication: The Finance Act, 2019 had amended Section 3(2) of the ITA to impose income tax on income accruing through a digital marketplace.

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

The proposed change comes at a time when many businesses are struggling to reduce operational costs and grappling with the increase in applicable taxes and may therefore be frowned upon by Medium, Small and Micro Enterprises (MSMEs).

There is a high likelihood that this new tax will be transferred to the consumer and will result in an increase in prices of goods and services rendered over the internet and electronic networks.

Proposed effective date: 1 July 2021

Resident persons off the hook on DST

Proposed provision: The Bill proposes to limit the imposition of the digital service tax (DST) to non-resident persons only.

Implication: The introduction of DST in 2020 was meant to increase the tax revenue base by taxing the increasing number of businesses operating through digital marketplaces.

This provision will offer relief to residents who are already subject to tax on the income that they derive from the digital platforms.

Further, this proposal aligns the taxation of income accrued through digital marketplaces with international best practices.

Proposed effective date: 1 January 2022

Incomes exempt from DST

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

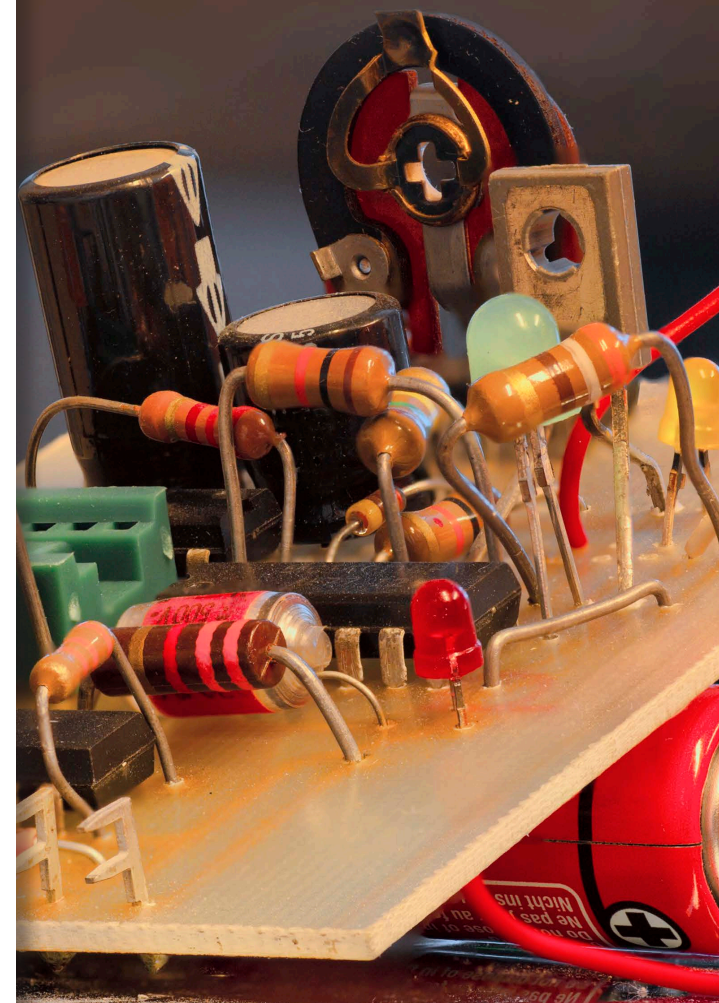
Further, the Bill proposes to exempt income subject to withholding tax from DST.

Implication: This proposal will offer relief to businesses in the communications sector as well as persons who receive income that is subject to withholding tax.

Ultimately, it is hoped that there can be a fine balance between revenue collection and maintaining businesses as a going concern without incapacitating them with huge tax liabilities.

However, it is important to note that this exemption was already provided for under the Digital Services Tax Regulations, 2020.

Proposed effective date: 1 January 2022



Tax Losses – Removal of the 10 year limit

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

Implication: The proposed change will enable taxpayers to offset taxable losses against future profits until they are fully exhausted.

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

The proposed amendment was important given the introduction of minimum tax that is based on gross revenues as opposed to profits. It should be noted, however, that the High Court has temporarily suspended the collection of minimum tax by KRA pending the hearing of petitions brought forward against the introduction of the new tax.

Proposed effective date: 1 July 2021

Insurance Relief – NHIF Contributions

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

Implications: This is a welcome proposal as it would cover a majority of Kenyans who pay NHIF contributions but are unable to enjoy the insurance relief afforded on premiums paid to other life insurance schemes. The proposal would also lead to higher net pay for employees due to the insurance relief being applied on NHIF contributions deducted through the payroll.

Proposed effective date: 1 January 2022

Overhaul of thin capitalization provisions

Proposed provision: The Bill proposes to introduce new provisions governing interest payments that are not deductible for corporation tax purposes.

Gross interest paid or payable to related non-resident persons or third parties in excess of thirty per cent (30%) of earnings before interest, taxes, depreciation and amortization (EBITDA) will be disallowable as per the Bill. Additionally, any income exempt from tax shall be excluded in the calculation of EBITDA.

This proposed provisions will apply to:

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

Implication: The proposed changes represent a significant overhaul of the current provisions relating to “thinly capitalized” companies. Currently, interest payments are disallowed proportionately if the sum of all loans are more than three times the aggregate of positive revenue reserves and share capital.

Highly geared entities will be adversely affected by the changes envisaged due to the low threshold (30%) for disallowing interest payments.

Proposed effective date: 1 January 2022

Withholding tax in the mining and petroleum sector

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

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

Implication: The proposed change will increase the cost of operating in the extractive sector in Kenya.

This will be a significant consideration especially at a time when the country is looking for a new principal investor and operator for the Turkana oil project.

Proposed effective date: 1 July 2021

Withholding tax on professional fees on mining and petroleum sector

Proposed provision: The Bill proposes to reduce the withholding tax rate for payments for the provision of management, training or professional fees from 12.5% to 10%.

Implication: The proposal will be a welcome change as it will bring reprieve to the extractive industry in Kenya as the reduced rates will allow for greater cash flow for players within the industry.

Effective date: 1 July 2021



Control in body corporates

Proposed provision: The Bill proposes to amend the interpretation section of the ITA to include a new definition of control.

Per the proposal, “control” has been defined as follows:

- A person has direct or indirect ownership of at least 20% of the voting rights in a company;
- A person has advanced a loan to another person and that constitutes at least 70% of the book value of the borrower’s total assets save for a loan from an unrelated financial institution.
- A guarantee by a person constitutes at least 70% of the total indebtedness of the other person save for a guarantee by an unrelated financial institution;
- A person has the power to appoint more than half of the board of directors or at least one director or executive member of the governing board;
- A person owns or has exclusive rights over intellectual property on which another person wholly depends for the manufacture or processing of goods or articles or business;
- A person or their assignee supplies at least 90% of the purchases of the other person or influences pricing or other conditions relating to such supply;
- A person or their assignee purchases at least 90% of the sales of another or influences pricing or conditions related to the sales; and
- A person deals or relates with another in a way which the commissioner deems to constitute control.

Implication: This provision reduces the threshold for control from 25% to 20% and will broaden the definition of control, which previously included shareholding and voting power that influences the conduct of affairs of a body corporate.

The proposal also corrects the omission of definition of control which was deleted by Tax Laws Amendment Act, 2020. The proposal is an appreciation of the fact that over time, suppliers, consumers, financiers and guarantors have increasingly exercised control over business affairs as well as taken positions in governance boards.

This will consequently increase the compliance burden for the affected taxpayers in a bid to comply with the transfer pricing legislation in Kenya.

Proposed effective date: 1 July 2021

What constitutes a Permanent Establishment?

Proposed provision: The Bill proposes to delete the current definition of a permanent establishment (PE) under the Income Tax Act and replace it as follows:

- A fixed place of business through which a business is carried on;
- A building site, construction, assembly or installation project or any supervisory activity, provided that the same continues for more than 183 days;
- Provision of services including consultancy services through employees or other personnel where those services continue for more than a period exceeding in aggregate, 91 days in any twelve month period;
- An installation or structure used for exploration of natural resources provided that such activity continues for a period of 91 days or more; and
- A dependent agent of a person acting on behalf of the principal in respect of activities undertaken in Kenya including habitually concluding contracts or playing a material role in the conclusion of contracts that are routinely concluded without material modification.

These provisions will not apply where the activities are of a preparatory or auxiliary character.

Implication: The new definition provides clarity on the activities that will culminate in a PE for a non-resident entities and the relevant qualifying durations. The prescription on the activities that do not constitute a PE is in line with the OECD Model Tax Convention on Income and Capital.

Consultants providing services on behalf of non-residents and players in the extractive industry will now result in a PE within 91 days, about half the time provided in the current Act. The new definition also introduces other activities such as a warehouse, farm, plantation and a sales outlet.

The provision also seeks to counter the artificial avoidance of PE status through the splitting of contracts, by aggregating the time spent on the various connected activities on construction and installation projects in determining the duration of a project.

The risk of crystallising a PE will therefore increase, requiring persons to constantly monitor the time spent by employees and consultants in Kenya and the potential tax obligations. Taxpayers will also be required to assess their controlled transactions and ensure that transfer pricing outcomes are aligned with value creation.

Proposed effective date: 1 July 2021

Multinational Enterprises – Additional reporting

Proposed provision: The Bill proposes to introduce a requirement for the ultimate parent entity (UPE) of a multinational enterprises group (MNE) to submit a return to the Commissioner detailing the group's financial activities in Kenya as well as in other jurisdictions where the group has a taxable presence.

An "Ultimate Parent Entity" is defined as an entity that:

- Is resident in Kenya for tax purposes;
- Is not controlled by another entity; and
- Owns and controls a multinational enterprise group.

"Multinational Enterprise Group" is defined as a group that includes two or more enterprises that carries on business through a PE or through any other entity in another jurisdiction.

The return submitted to the Commissioner shall include information relating to the amount of revenue; profit or loss before 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. The return should be submitted not later than 12 months from the last day of the group's financial year.

The proposed provision will apply to MNE Groups that have gross turnover exceeding the prescribed revenue threshold. The Bill is silent on the threshold and has not provided the relevant reporting template. We expect additional guidelines to operationalise this proposal.

Implication: This proposed change has been introduced with a view to align with the OECD Base Erosion and Profit Shifting (BEPS) Action 13 on Country-by-Country (CbC) reporting. This provision currently applies to multinational groups whose UPE is based in Kenya.

CbC reporting seeks to enhance transparency of MNEs tax matters as well as enable tax authorities in different jurisdictions to share relevant tax information with each other. Kenya is a signatory to The Multilateral Convention on Mutual Administrative Assistance in Tax Matters which entered into force on 1 November 2020. The Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance. Once the necessary frameworks are in place, it is expected that the information will be used by the KRA to collaborate with other countries on the exchange of information as well as carrying out transfer pricing risk assessments.

The introduction of CbC reporting will result in additional transfer pricing documentation and reporting requirements for MNEs. This will not only lead to increased compliance costs on reporting, but also increased tax and transfer pricing audits from the KRA.

Proposed Effective date: 1 January 2022





Value Added Tax Act

Clarity on supply of imported services

Proposed provision: The Bill proposes to amend the conditions for a supply to be considered as a supply of imported services. The amendment provides that among other conditions, 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.

In addition, the Bill proposes to align the treatment of imported services with the amended definition by clarifying that both registered and non-registered persons are considered to have made a supply to themselves if they import a taxable supply.

Implication: This amendment clarifies the ambiguity on the definition of supply of imported services in the case of persons not registered for VAT. In the proposal, it is clear that both registered and non-registered persons will be deemed to have made a supply of imported services, consequently they will be liable to account for reverse VAT, where applicable.

Proposed effective date: 1 July 2021

Expanded scope for digital services

Proposed provision: The Bill proposes to expand the definition of digital services to include supplies made over the internet or an electronic network in addition to those made through a digital marketplace.

Further, it expands the definition of a digital marketplace to mean an online platform which enables users to sell or provide services, goods or other property to other users.

Implication: This expands the definition of digital services chargeable to VAT by adding those made over the internet or an electronic network. In addition, the expansion of the definition of the digital marketplace extends the base for purposes of determining what comprises digital services for purposes of chargeability to VAT.

Proposed effective date: 1 July 2021

Clarity on deductibility of input VAT

Proposed provision : The Bill seeks to amend 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 proposal deletes the reference that the input VAT restriction is only limited to the provisions of Section 17 but will now include the provisions of the entire VAT Act and Regulations.

Implication: This clarification means that prior to the deduction of input VAT, businesses should ensure that the purchase was incurred to make a taxable supply despite any other provisions of the VAT Act and Regulations. This has been the practice. However, the wording of the VAT Act currently may be interpreted to mean that the requirement for the purchase to have been incurred to make a taxable supply as not applicable when considering the other provisions of the VAT Act and Regulations.

Proposed effective date: 1 July 2021

Additional restriction on claiming input VAT

Proposed provision: The Bill has expanded the restriction on claiming of input VAT to the leasing or hiring of passenger cars or mini buses, entertainment, restaurant and accommodation services. As currently worded, the VAT Act only refers to acquisition of these supplies.

Implication: The proposed amendment implies that input VAT incurred in relation to the procuring of passenger cars or mini buses and entertainment, restaurant and accommodation services in any form including leasing, hiring and purchasing is not deductible.

The proposed amendment will provide clarity on the deductibility of VAT relating to leasing or hiring of these supplies.

Proposed effective date: 1 July 2021

End of group VAT registration

Proposed provision: The Bill proposes to delete the provision that the Cabinet Secretary may provide, through Regulations, for the registration of group of companies as one registered person for VAT.

Implication: This provision seeks to limit the consolidation of transactions within group companies for VAT purposes and therefore, each entity within the group is responsible to account for VAT on intra-group transactions.

It is important to note that the provision on VAT registration was not effective as the Cabinet Secretary (CS) had not gazetted the Regulations on group VAT registration.

Proposed effective date: 1 July 2021

Scrapping of pre-approval of VAT Regulations by the National Assembly

Proposed provision : The Bill proposes to remove the requirement for the Cabinet Secretary to table any VAT Regulations to the National Assembly for approval before their implementation.

Implication: This proposal implies that new VAT Regulations will be implemented without any prior approval by the National Assembly. Effectively, the National Treasury will be able to come up with new tax measures and implement them without any oversight by the National Assembly. If this amendment is passed into law, this will raise a Constitutional concern as the National Treasury will be at liberty to implement new VAT legislations without going through the National Assembly for approval.

It is also important to note that tabling of Regulations before the National Assembly is provided for under Statutory Instruments Act (STA) which provides for procedure for parliamentary scrutiny of the statutory instruments before they are implemented. The STA provides that the Cabinet Secretary shall within seven (7) sitting days after the publication of a statutory instrument ensure that a copy of the statutory document is transmitted to the responsible Clerk for tabling before Parliament.

Implication: The STA further provides that where a copy of a statutory instrument that is required to be laid before Parliament is not so laid, it shall cease to have effect immediately after the last day that it was supposed to be so laid.

On this basis, the proposed deletion goes against the spirit of the Constitution as envisaged in the STA as it seeks to remove the Parliamentary oversight on Regulations.

Proposed effective date: 1 July 2021



Value Added Tax - Tax rate changes

a) Tax rate changes (Services – Zero rated to exempt)

Details	New rate	Old rate
The exportation of taxable services	Exempt	0%

The proposed change of VAT rate on the exportation of taxable services from zero-rated to exempt will mean that companies will not be able to claim input VAT incurred in the supply of exported services.

This proposal comes at a time where KRA had a different interpretation from taxpayers on what constitutes an export of service, leading to KRA's rejection of taxpayers' refund claims. As a result, the rejection of the various taxpayers' claims, coupled with multiple KRA assessments for VAT on exported services, inevitably led to a lot of cases at the Tax Appeals Tribunal and the High Court, a great number of which KRA has lost. Therefore, the proposed amendment may be viewed as a measure taken by KRA to address the recent losses at the various courts. Further, this move is likely to deter investments in Kenya as a service centre due to the fact that the companies would not be able to recoup their input VAT.

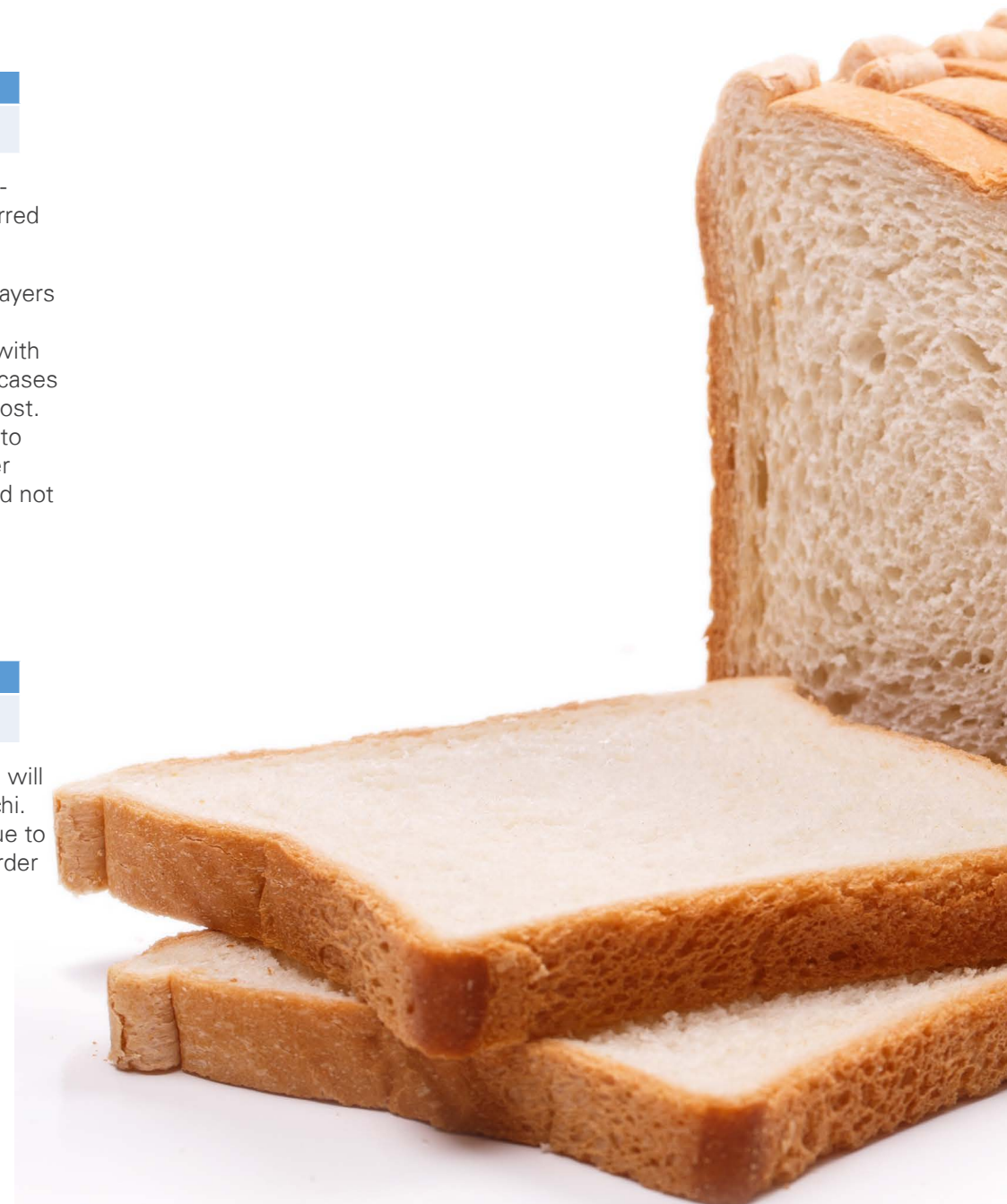
Proposed effective date: 1 July 2021

b) Tax rate changes (Goods – Zero rated to VATable)

Details	New rate	Old rate
The supply of ordinary bread	16%	0%

The proposed change of VAT rate on the supply of bread from zero rate to VATable will increase the price of this product which is a staple food for the ordinary Mwananchi. The proposal to subject ordinary bread to VAT is likely to face a lot of push back due to reduced incomes arising from the containment measures introduced globally in-order to fight the COVID-19 pandemic.

Proposed effective date: 1 July 2021



Value Added Tax - Sanitization of exempt supplies tariff classification

The Bill proposes a clean up of various tariff classifications in the First Schedule to the VAT Act as some of the items under this Schedule had drafting errors. Some of the drafting errors included erroneous tariff codes and duplications of items with similar tariff codes. We tabulate the proposed amendments as below:

Proposed description (Exempt)	Current description (Exempt)
Syringes, with or without needles of tariff no. 9018.31.00.	Disposable plastic syringes of tariff No. 9018.31.10
	Other syringes with or without needles of tariff No. 9018.31.90
3001.90.00 Other - Heparin and its salts	3001.90.10 Heparin and its salts.
3001.90.00 Other - Other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included	3001.90.90 - Other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included
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	3002.10.00 - Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes
Super absorbent polymer (SAP) of tariff number 3906.90.00	Super absorbent polymer (SAP) of tariff number 39.06.90.0
IP super soft fluff pulp - for-fluff 310 treated pulp 488*125mm (cellulose) of tariff number 4703.21.00	IP super soft fluff pulp - fr-fluff 310 treated pulp 488*125mm (cellose) of tariff number 4703.21.0
Perforated PE film 15-22 gsm of tariff number 3921.90.00	Perforated PE film 15-22 gsm of tariff number 3921.190.0
Spun bound non-woven 15-25gsm of tariff number 5603.11.00	Spunbound non-woven 15-25 gsm of tariff number 56.03.1190.8
Airlid paper with super absorbent polymer 180gsm/67 of tariff number 4803.00.00	Airlid paper with super absorbent polymer 180gsm/67 of tariff number 48.03.00.0
Airlid paper with super absorbent polymer 80gsm/67 of tariff number 4803.00.00	Airlid paper with super absorbent polymer 80gsm/67 of tariff number 48.03.00.0

Items under paragraph 33 and 34 of the First Schedule to the VAT Act which comprise of syringes and disposal plastic syringes have been deleted as these items are covered under tariff no. 9018.31.00. Therefore, these items still remain as exempt supplies.

Proposed effective date: 1 July 2021

Value Added Tax - Sanitization of exempt supplies tariff classification

Proposed description (Exempt)	Current description (Exempt)
Pressure sensitive adhesive of tariff number 3506.91.00	Pressure sensitive adhesive of tariff number 3506.91.90
Plain polythene film/LPDE of tariff number 3921.19.10	Plain polythene film/LPDE of tariff number 39.21.190.0
Plain polythene film/PE of tariff number 3921.19.10	Plain polythene film/PE of tariff number 39.21.190.0
PE white 25-40gsm/release paper of tariff number 4811.49.00	PE white 25-40gsm/release paper of tariff number 48.44.51.10.0.
ADL 25-40gsm of tariff number 5603.11.00	ADL 25-40gsm of tariff number 56.03.1190.8.
Elasticized side tape of tariff number 5402.44.00	Elasticized side tape of tariff number 5402.4410.
12-16 gsm spun bound piyropo nonwoven cover stock/12 gsm spun bound pp non-woven SMS hydrophobic leg cuffs of tariff number 5603.11.00	12-16 gsm spunbound piyropononwoven coverstock/12gsm spunbound PP non-woven SMS hydrophobic leg cuffs of tariff number 56.03.1190.8.
Polymetric elastic 2/3 strands of tariff number 3919.90.10	Polymetric elastic 2/3 strands of tariff number 3919.90.90.10.

Duplicated items

The Bill proposes to delete the following items from the list of exempt items as they are duplicated under similar tariff coding:

- Paragraph 75: Airlid paper without super absorbent polymer 180gsm/67 of tariff number 48.03.00.0
- Paragraph 76: Airlid paper without super absorbent polymer 80gsm/67 of tariff number 48.03.00.0.
- Paragraph 85: Plain polythene film/PE of tariff number 39.20.10.10.
- Paragraph 86: PE white 25-40gsm/release paper of tariff number 48.10.99.00.
- Paragraph 87: 12-16 gsm spunbound piyropononwoven coverstock/15gsm spunbound PP non-woven SSMMS hydrophobic leg cuffs of tariff number 56.03.1190.

Similarly, the tariff coding for these items has been corrected under the Finance Bill Proposals. The deletion of the duplicated items and clean up of the erroneous tariff codes is set to align the VAT Act tariff classifications with the East African Community Common External Tariffs.

Proposed effective date: 1 July 2021

Value Added Tax - Sanitization of exempt supplies tariff classification

VAT Exemptions on infant milk

The current VAT Act provides for exemption of infant milk under the following tariff codes listed below:

0402.99.10 Milk, specially prepared for infants

0402.91.10 Milk, specially prepared for infants

0402.29.10 Milk, specially prepared for infants

0402.21.10 Milk, specially prepared for infants

However, these tariff codes are not aligned with the EAC Common External Tariff. The Bill proposes to delete these tariff codes and add to the list of exempt items the codes as tabulated below:

New provisions	Deleted provisions
0402.21.00 Milk in powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5%, not containing added sugar or other sweetening matter	0402.99.10 Milk, specially prepared for infants
0402.29.00 Other milk in powder granules or other solid forms, of a fat content, by weight, exceeding 1.5%	0402.91.10 Milk, specially prepared for infants
0402.91.00 Other not containing added sugar or other sweetening matter.	0402.21.10 Milk, specially prepared for infants
0402.99.00 Other milk	

Implication: This proposal ensures that the correct tariff codes are captured in relation to VAT exemption of value added milk. There is a possibility that the importation/production of infant milk could fall under the description of "other milk". However, this is subject to different interpretations. It is also interesting that the item " 0402.29.10 Milk, specially prepared for infants" has not been proposed for deletion and therefore it is still arguable that the infant milk is still exempt.

The Bill further proposes to expand the categories of the following items while maintaining them under the list of exempt items:

Tariff Number	Description	New Rate	Old Rate
3003.31.00	Insulin	Exempt	Exempt
9018.90.00	Blood giving set and infusion sets	Exempt	Exempt

Proposed effective date: 1 July 2021

Value Added Tax – Change of Tax Rate – Standard Rated to Exempt

Tariff Number	Description	New Rate	Old Rate
2106.10.00	Protein concentrates and textured protein substances	Exempt	16%
2106.90.10	Food preparations specially prepared for infants	Exempt	16%
2106.90.99	Other - Food preparations not elsewhere specified or included	Exempt	16%
2936.27.00	Vitamin C and its derivatives	Exempt	16%
3004.43.00	Other medicaments, containing alkaloids or derivatives containing norephedrine or its salts	Exempt	16%
3004.60.00	Other, containing antimalarial active principles described in Subheading Note 2 to this Chapter	Exempt	16%
2106.90.91	Food supplements	Exempt	16%
3002.11.00	Malaria diagnostic test kits	Exempt	16%
9021.10.00	Orthopaedic or fracture appliances	Exempt	16%
9021.50.00	Other artificial parts of the body: Pacemakers for stimulating heart muscles, excluding parts and accessories	Exempt	16%
9025.19.00	Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments, thermometers and pyrometers, not combined with other instruments: Other	Exempt	16%
9019.20.00	Airway Guedel and Ambu bags	Exempt	16%

Proposed effective date: 1 July 2021



Value Added Tax – Change of Tax Rate – Standard Rated to Exempt

Description	New rate	Old 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.	Exempt	16%
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.		
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.		
Medical ventilators and the inputs for the manufacture of medical ventilators upon recommendation by the Cabinet Secretary responsible for matters relating to health.		
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.		
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.		
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		
Diagnostic or laboratory reagents, of tariff number 3822.00.00 on a backing, prepared diagnostic or laboratory reagents 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.		
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.		
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.		
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.		
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.	Exempt	16%
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.		

Description	New rate	Old rate
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.	Exempt	16%
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.		
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.		
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.		
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.		
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.		
Sterilizer Dry Heat (Wgd-001-Grx-05A) Pc, autoclave steam table tops of tariff number 8419.20.00 upon approval by the Cabinet Secretary responsible for matters relating to health.		
Needle holders and urine bags, of tariff heading 3926		
Tourniquets of tariff number 3926.90.99 for use by licensed hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.		
The transfer of assets and other transactions related to the transfer of assets into real estate investment trusts and asset-backed securities.		

Due to the Covid-19 pandemic, the government has exempted medical equipment and inputs used to manufacture equipment such as ventilators, breathing appliances and medicaments. This move will lower the cost of production due to the lower cost of importation which will lead to the increase in capacity to fight the pandemic.

The exemption of 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 for Energy is also a welcome move as it will promote the development of clean energy sources.

The return of VAT concessions on 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 for Energy, the Cabinet Secretary for Petroleum, or the Cabinet Secretary for Mining will also reduce the cost of investment and operations in this capital intensive industry. This is now likely to encourage future investments in these sectors which have seen some of the biggest players abandoning projects due to the escalating costs.

Proposed effective date: 1 July 2021

Excise Duty

Introduction of new definitions

Proposed amendment: The Bill seeks to introduce definitions of “compound” and possession”, terms that have been used within the Excise Duty Act 2015. Currently, these terms are not defined.

Compound has been defined to mean: “to communicate any flavor to, or to mix any ingredient or material with, spirits, but not so as to denature the spirits.” This meaning aligns with that assigned under the Compounding of Potable Spirits Act.

Possession has been defined to mean: “having, owning or controlling any excisable goods including;

- a) Having in one’s possession any excisable goods
- b) Knowingly having any excisable goods in the actual possession or custody of any other person
- c) Having any excisable goods in any place, whether belonging to or occupied by oneself or not, for the use or benefit of oneself; or
- d) 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 them.

Implication: The Bill seeks to remove any ambiguity on what these terms mean by introducing the definition in the Second Schedule of the Act.

This subsequently brings clarity on the application of these terms throughout the Act for the purposes of compliance.

Proposed effective date: 01 July 2021

Rebates to internet data providers

Proposed amendment: The Bill seeks to introduce a new provision to allow the offset of excise duty paid on purchase of bulk data which is subsequently resold against the excise duty payable by the licenced internet data provider.

This rebate shall only be available where the internet data services are supplied to the final consumer.

Implication: This move will provide relief to internet data services providers and may subsequently reduce the cost of internet to the final consumers.

Proposed effective date: 01 July 2021



Excise duty on confectionery

Proposed amendment: The Bill seeks to amend the excise duty provision by reintroducing excise duty on locally manufactured sugar confectionery and white chocolate.

Through the Finance Act, 2019, locally manufactured sugar confectionery and chocolate were excluded from the purview of excise duty.

The Bill now seeks to reintroduce excise duty on the above locally manufactured goods as tabulated below:

Particulars	Rate
Sugar confectionery - not containing cocoa	20.99/kg
White chocolate (blocs, slabs or bars) – containing cocoa	209.88/kg

Implication: The Bill proposes to charge excise duty on all supplies of sugar confectionery and white chocolate whether imported or local.

The additional cost may negatively impact the consumption and manufacture of these products.

This move may also discourage the local manufacturing of these goods as this proposal will not cushion the local companies from the competition of cheaper imports.

Proposed effective date: 01 July 2021

Exemption of imported glass bottles

Proposed amendment: The Bill proposes to exclude imported glass from excise duty.

Excise duty on imported glass was first introduced by the Business Laws (Amendment) Act, 2020, which amended the First Schedule to the Excise Duty Act, 2015, by imposing duty at 25%.

Implication: If this provision were to be implemented, it will be a welcome move for manufacturers who use imported glass to package their products and rely heavily on imported glass.

Proposed effective date: 01 July 2021



Change to the Excise Duty rates

Proposed amendment: The Bill seeks to change/introduce the excise duty on the following items:

Particulars	Proposed Rate	Old Rate
Motor cycles of tariff 87.11 other than motor cycle ambulances and locally assembled motor cycles	15%	KES 11,608.23 per unit
Jewellery of tariff 7113 and Imported Jewellery of tariff 7117	10%	Nil
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 manufacture tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences	KES 5,000 Per Kg	Nil

Implication: The additional cost may negatively impact the consumption and purchase of these products.

The introduction of excise duty on nicotine substances and jewellery could be seen to be a measure to generate additional revenue for the government in the form of sin taxes.

On the other hand, the ad-valorem Excise Duty rate on motorcycles may be viewed as a policy measure to encourage the local manufacture of motorcycles.

Proposed effective date: 01 July 2021

Excise Duty reintroduced on betting

Proposed amendment: The Bill proposes to reintroduce excise duty on betting at a rate of 20% of the amount wagered or staked in a move that could see punters pay billions of shillings in tax. The tax was initially introduced in the year 2019 but was removed in July last year through the Finance Act 2020 following lobbying by betting firms.

Implication: If this proposal is passed, the current duty reprieve will indeed be short-lived. With the reintroduction of the excise duty at 20%, we could see again a situation where key industry players exit the market citing an unsustainable and unfavourable business environment.

Proposed effective date: 01 July 2021.

Introduction of Excise Duty on fees and commissions earned on loans

Proposed amendment: The Bill seeks to amend the definition of “other fees” by deleting the words ‘fees or commissions earned in respect of a loan.’

Previously, other fees were defined to include any fees, charges or commissions charged by financial institutions, but excluded from excise duty, interest on loan or return on loan or fees or commissions earned in respect of a loan. Effectively this meant that fees and commission earned on loans were not within the purview of excise duty.

In the recent past, the Tribunal has issued judgements relating to chargeability of excise duty on loan related fees. In these judgements, the Tribunal has consistently held that loan related fees such as loan administration fees are not chargeable to excise duty.

Implication: In recent disputes between various financial institutions and KRA, the Tax Appeal Tribunal has ruled that fees paid in respect of a loan qualify as interest and in our view the proposed amendment aligns with this thinking.

Proposed effective date: 01 July 2021



Tax Procedures Act

Scope of TPA to include Miscellaneous Fees and Levies Act

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

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

Proposed effective date: 1 July 2021

Financial institutions to report to KRA

Proposed provision: The Bill proposes to introduce a mandatory requirement for financial institutions to conduct due diligence procedures and report to the Commissioner reportable accounts in accordance with the Common Reporting Standards (CRS).

The new requirement will come into effect once the Cabinet Secretary, National Treasury, has published the CRS Regulations.

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

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

A reporting financial institution that fails to file the return will be subject to a fine of **KES 1,000,000**.

Implication: Globally, CRS filings have been a useful tool for revenue authorities to enhance compliance and disclosure, effectively curbing revenue leakage.

Proposed effective date: 1 July 2021

Extension of timeframe for record keeping and assessment

Proposed provision: The Bill proposes to amend the provisions of the TPA by increasing the record retention period from 5 to 7 years. To align this proposal with the audit statutory limitation period, the Commissioner may amend the time period for an assessment from 5 to 7 years.

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

This proposal aligns the record keeping and retention periods with the Companies Act, making compliance across the laws simpler.

Proposed effective date: 1 July 2021

Restricted disclosure of information exchanged pursuant to international tax agreement

Proposed provision: The Bill proposes to restrict disclosure of information obtained by the government under multilateral tax agreements.

Implication: The proposed change seeks to buttress the privacy and confidentiality obligations contained in the TPA and other relevant legislation including Data Privacy Act.

Proposed effective date: 1 July 2021

Abolition of amnesty on tax on rental income

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

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

Proposed effective date: 1 July 2021

Reporting currency for non-resident digital service suppliers

Proposed provision: The Bill proposes to amend the TPA to exempt non-residents carrying on business through a digital marketplace from the requirement to keep their books of accounts, records, paper registers, tax returns or tax invoices in Kenyan shillings. Therefore, such persons can maintain records in convertible foreign currency.

Implication: This proposed amendment if adopted, will simplify compliance for non-resident entities that are subject to the Digital Service Tax by allowing them to keep records and issue tax invoices in convertible foreign currency.

The is likely to improve efficiency in the administration and payment of DST by non-resident entities.

Proposed effective date: 1 July 2021

Due date for electronic filings

Proposed provision: The TPA provides that when a date for submitting or lodging a tax return, application, document, payment of tax, or for the taking any other action falls on a weekend or public holiday, then the due date shall be the previous date.

The Bill proposes that the due date for the above shall remain the date specified in the relevant tax law as opposed to the previous date.

Due date for electronic filings...cont'd

Implication: This proposed amendment is a welcome clarification. This provision will allow for the filing of returns and objections on weekends or on public holidays where the due dates for filings or payment of taxes fall on weekends or public holidays.

Proposed effective date: 1 July 2021

Relief from liability due to difficulty in recovery of taxes

Proposed provision: The Bill proposes to amend the TPA by allowing the Commissioner to refrain from assessing or recovering unpaid tax from a taxpayer where there is any other reason occasioning inability to recover the unpaid tax.

Further, the Bill proposes to introduce a requirement for the Commissioner to submit a report to the Cabinet Secretary containing the details and amounts of taxes abandoned on grounds of doubt or difficulty in recovery of tax.

Implication: This proposed amendment seeks to expand the grounds upon which the Commissioner may abandon tax due to doubt or difficulty. The amendment is likely to be a welcome relief to taxpayers who have been issued with assessments that would be prejudicial to the future operations of their businesses.

Proposed effective date: 1 July 2021

Elimination of exemption from Withholding VAT

Proposed provision: The Bill proposes to delete the provisions of the TPA which allow the Commissioner to exempt a supplier from Withholding VAT if the supplier proves that they are going to be in a continuous credit position for a period of not less than 24 months.

Implication: The proposed amendment removes exemption from the application of withholding VAT. If passed, the amendment is likely to improve the government's cashflow position but will result in cashflow challenges for taxpayers whose VAT is withheld, especially those in a perpetual refund situation.

Proposed effective date: 1 July 2021

Offsetting tax liabilities against verified refunds

Proposed provision: The Bill proposes to empower the Commissioner to apply a refund against any other outstanding tax liability owed by the taxpayer. In such a case, once the Commissioner notifies the taxpayer of its intention to offset the verified refund application against existing tax liabilities, no interest and penalties shall accrue on the refund amount KRA intends to offset the refund amount against the outstanding tax.

Where the refund applied is less than the outstanding tax, then the remainder of the outstanding tax continues to accrue interest and penalties.

Implication: This proposed amendment seeks to alleviate the interest burden on taxpayers as KRA will first utilize the refund against any outstanding tax and in addition pursue penalties and interest on outstanding tax.

Proposed effective date: 1 January 2022

Intervention from relevant authorities in collection of DST

Proposed provision: The Bill proposes to amend the TPA to permit the Commissioner to seek the intervention of a relevant authority in the collection of tax where a person provides services through a digital marketplace.

Implication: This is a strong tool that gives the Commissioner significant power to compel compliance with DST obligations.

Proposed effective date: 1 July 2021

Stay of proceedings

Proposed provision: The Bill proposes to amend the provisions of the TPA to ensure there is no stay of proceedings where there is a concurrent civil or criminal case.

Implication: This proposed amendment is meant to ensure that there is faster resolution of tax disputes even in the face of ongoing criminal or civil proceedings.

Proposed effective date: 1 July 2021

PIN requirement for vendors in a digital marketplace

Proposed provision: The Bill proposes to amend the First Schedule to the TPA by including the selling of goods and services over a digital marketplace in the list of transactions for which a PIN is required.

Implication: This proposed amendment seeks to support the full roll out of DST and ensure that there is no revenue leakage from the sale of goods over a digital marketplace and also from the provision of digital services over a digital marketplace.

Proposed effective date: 1 July 2021





Miscellaneous Fees and Levies Act (MFLA)

Refund of excess IDF & RDL

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

Implication: The proposed amendment is in line with the overall amendment of the scope of the TPA to include the MFLA. Going forward, taxpayers will be able to obtain a refund for overpaid RDL and IDF but should also be cautious of the penalties and interest as provided by the TPA, which would apply in the event on non-payment.

Proposed effective date: 1 January 2022

Exemption of goods in public interest or promotion of investment

Proposed provision: The Bill seeks to exempt goods from IDF and RDL where the Cabinet Secretary determines that the goods imported are for public interest or they are for promotion of investment of more than KES 5 Billion.

Implication: The proposed exemption is an incentive for investors in strategic industries which may be considered to be of public interest or in promotion of key sectors. This is likely to fuel new investments into the country.

Proposed effective date: 1 July 2021





Capital Markets Act

Time limit for determination of matters at the Capital Markets Tribunal

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

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

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

Proposed effective date: 1 July 2021



Insurance Act

Regulation of insurance brokers and introduction of an annual fee for insurers

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

The Bill further seeks to provide for an annual fee to be paid by a registered person who is licensed as an insurer under the Act.

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

Proposed effective date: 1 January 2022

Removal of requirement of Kenya Reinsurance Corporation to certify reinsurance contracts

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

Implication: The proposed amendment is perhaps informed by the realization that there are several reinsurance players in Kenya and therefore any regulation of reinsurance contracts is a role for the regulator as opposed to an active market player.

Proposed effective date: 1 July 2021

Regulation of Closed Insurance Funds

Proposed provision: The Bill seeks to amend the Insurance Act to provide for the continuation of the operation of a closed fund insurance business without the need for registration but subject to the insurer furnishing the Commissioner with information as may be required and honouring existing policies.

The Bill further proposes to impose a fine not exceeding **KES 200,000** and a further fine of **KES 10,000** for each day in which the insurer fails to honour its policy obligations.

Further, the Bill proposes that the assets of a closed fund shall not be disposed off except with the permission of the Commissioner.

Implication: The proposed regulation of closed funds will protect policyholders and provide an avenue for the orderly winding up of closed funds businesses.

Proposed effective date: 1 July 2021





Kenya Revenue Authority

Reward to KRA informers

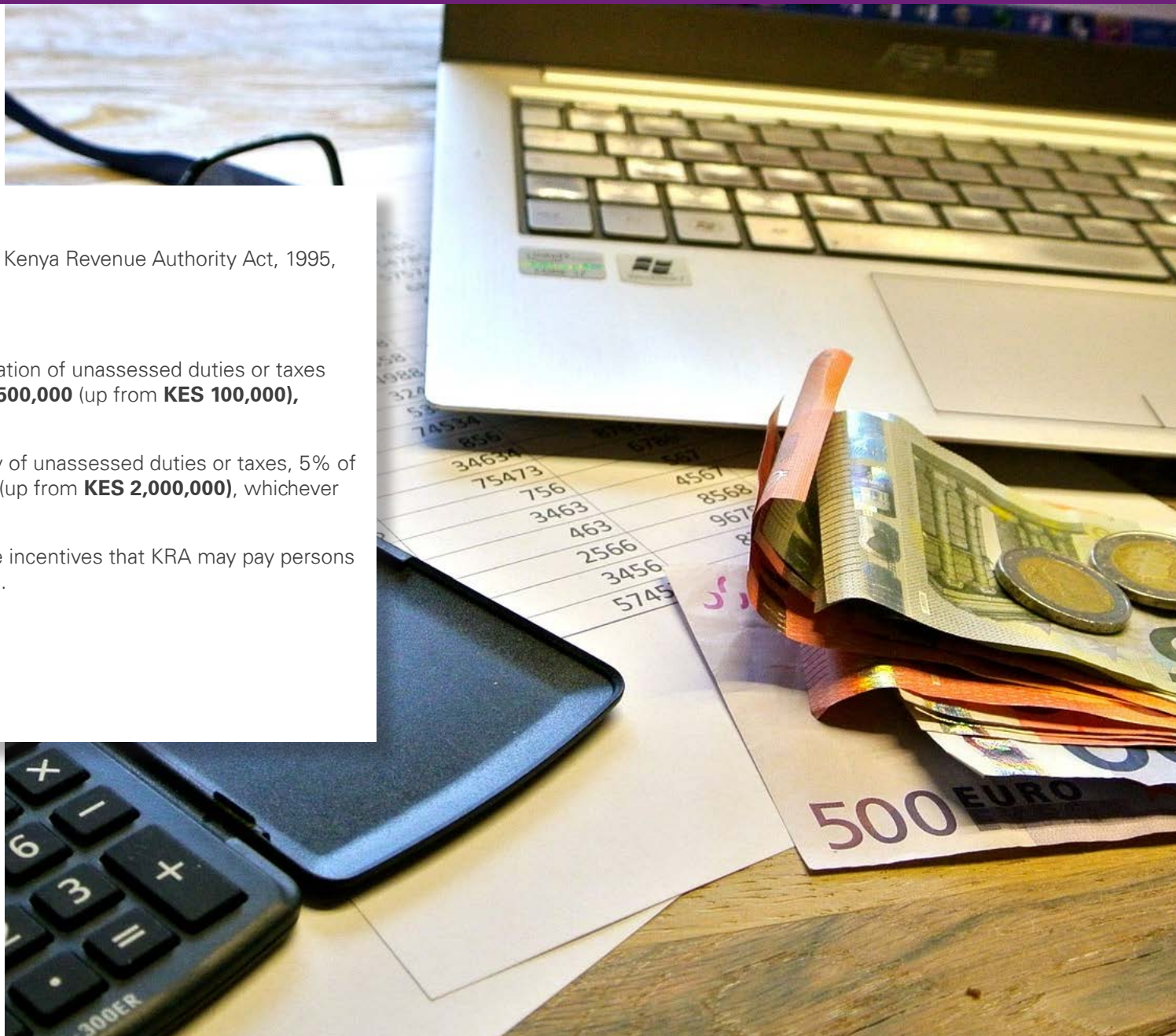
Proposed provision: The Bill proposes to amend the Kenya Revenue Authority Act, 1995, to increase the maximum reward to informers.

The proposed increased rewards will be as follows:

- In the case of information leading to the identification of unassessed duties or taxes – 1% of the duties or taxes so identified or **KES 500,000** (up from **KES 100,000**), whichever is the less; and
- In the case of information leading to the recovery of unassessed duties or taxes, 5% of the taxes or duties so recovered **KES 5,000,000** (up from **KES 2,000,000**), whichever is the less.

Implication: The proposed amendment enhances the incentives that KRA may pay persons who disclose information that leads to recovery taxes.

Proposed effective date: 1 July 2021





Retirement Benefits Act

Registration and regulation of corporate trustees

Proposed provision: The Bill seeks to amend the Retirement Benefits Act, 1997, to provide for the registration and regulation of corporate trustees that provide services to pension schemes.

Implication: The proposed amendment will expand the scope of regulation of the Retirement Benefits Authority to include corporate trustees. This proposal is likely to increase the public's confidence in the corporate trustees who manage their retirement benefits.

Proposed effective date: 1 July 2021

Extension of time of filing pension scheme accounts

Proposed provision: The Bill proposes to amend the Act so as to provide an additional three months for trustees to file audited accounts where the delay is justified. Where an extension is provided, the trustees are not subject to late submission penalty.

Implication: The proposed amendment will enhance compliance by trustees because in some instances, the audited accounts are not ready within the six months period that is provided under the Act.

Proposed effective date: 1 July 2021

Post-retirement medical fund

Proposed provision: The Bill proposes to amend the Act so as to provide for a post-retirement medical fund which shall be within a scheme and from which the costs of medical benefits shall be met in accordance with the medical fund rules.

Implication: The proposed amendment is geared towards ensuring that retirees are able to access quality healthcare.

Proposed effective date: 1 July 2021





Central Depositories Act

Disclosure of Beneficial Owners

Proposed provision: The Bill proposes to amend the Central Depositories Act, 2000, to enhance the regulation of investors in the capital markets such that all purchases and sales of deposited securities and other dealings made in respect thereof, include the identity of the buyer and seller of each of those deposited securities or, in the case of other dealings, the identity of the persons executing such dealings and the persons in whose favour the dealings are executed.

The Bill proposes to introduce a new provision allowing a beneficial owner or legal owner to appoint an authorized nominee for the purpose of opening a securities account and where such nominee is acting for more than one beneficial owner, the Bill proposes that the nominee should open an omnibus account.

Implication: The proposed amendment seeks to enhance due diligence procedures and documentation on the identity of investors. The proposed amendment aligns with the recent changes under the Companies Act which requires companies to maintain details of beneficial owners. Disclosure of beneficial ownership is among the measures that the government is taking to combat tax evasion, fraud, money-laundering and financing of terrorism.

Proposed effective date: 1 January 2022



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