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RSMEA Newsletter

Update on the Kenya Finance Bill, 2025

The Draft Finance Bill, 2025, was released on 30th April 2025 and subsequently gazetted on 6th May 2025. While we had earlier provided a detailed analysis of the draft Bill, we have now reviewed and compared it with the gazetted version. Our review indicates that there are no major changes between the two versions. Nevertheless, we have identified a few specific differences, which we outline below by reference to various tax laws:

1. Income Tax Act

There are no changes between the draft and gazetted versions in respect of the proposed amendments under the Income Tax Act. Accordingly, our previous commentary and analysis, as disseminated via our newsletter and webinar, remain valid and unchanged.

2. Value Added Tax Act

Two notable proposals included in the draft Bill have been omitted in the gazetted version:

- **Tariff Reclassification of Food Supplements**

The draft Bill proposed a revision to the tariff classification of food supplements, reclassifying them under tariff code 2106.90.30. However, this tariff code is not recognised under the East African Community Common External Tariff (EAC CET). The omission of this provision in the gazetted version appropriately corrects this anomaly. As a result, food supplements will continue to be exempt from VAT.

- **VAT Exemption for Certain Medicaments**

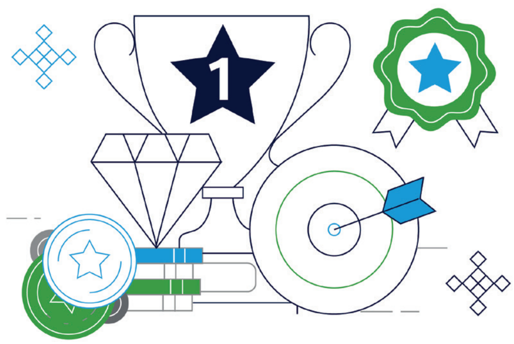
The draft Bill had proposed to remove the VAT exemption on "other medicaments containing alkaloids or derivatives thereof, put up in measured doses or forms for retail sale," effectively subjecting them to 16% VAT. This proposal has been omitted in the gazetted version. As such, these medicaments will remain VAT-exempt if the Bill is enacted as currently gazetted.

3. Excise Duty Act

The draft version of the Finance Bill had proposed the removal of excise duty on imported eggs (tariff heading 04.07), imported onions (tariff heading 07.03), and imported potatoes, including potato crisps and potato chips (tariff heading 07.01). However, this proposal has not been retained in the gazetted version of the Bill. Consequently, if enacted in its current form, excise duty will continue to apply to these items.

4. Tax Procedures Act

The provisions relating to the Tax Procedures Act remain consistent between the draft and gazetted versions of the Finance Bill. Consequently, our previously issued analysis and commentary, as presented in the newsletter and webinar, remain unchanged and continue to reflect our position.



5. Miscellaneous fees and levies Act

The draft version of the Finance Bill had proposed a reduction in the Export and Investment Promotion Levy on the items listed below—from the prevailing rate of 17.5% of the customs value to 5%. However, in the gazetted version of the Bill, the proposed reduction has been revised to a rate of 10%, rather than the initially proposed 5%. The affected tariff lines are as follows:

- 7207.11.00 – Semi-finished products of iron or non-alloy steel containing, by weight, less than 0.25% carbon; of rectangular (including square) cross-section, with a width measuring less than twice the thickness.
- 7213.91.10 – Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14 mm in diameter, or with a cross-section measuring less than 8 mm.
- 7213.91.90 – Bars and rods of iron or non-alloy steel, hot-rolled, in irregularly wound coils of circular cross-section measuring less than 14 mm in diameter.

While the proposed revised rate of 10% represents a reduction from the current 17.5%, the continued imposition of the levy still presents a cost disadvantage for imports relative to locally sourced products.

6. Stamp Duty Act

Although the draft version of the Finance Bill, 2025 did not propose any amendments to the Stamp Duty Act, the gazetted version introduces a new exemption. Specifically, it proposes to exempt from stamp duty the transfer of property by a company to its shareholders as part of an internal reorganisation.

This exemption will be applicable only if the following two conditions are satisfied:

a. The property is transferred to shareholders in proportion to their shareholding in the company immediately prior to the transfer; and
b. Where the property being transferred comprises shares, such shares must be in a subsidiary of the transferring company.

While the Stamp Duty Act does not currently define the term "subsidiary," reference may be made to the Companies Act, which defines a subsidiary as *a company of which another company is its holding company*. Further under the Companies Act, a holding company is defined in relation to another company as one that:

a. controls the composition of that company's board of directors;
b. controls more than half of the voting rights in that company;
c. holds more than half of the company's issued share capital; or
d. is a holding company of a company that itself qualifies as the holding company of the subject company.

Accordingly, unless the Stamp Duty Act introduces a specific definition of "subsidiary" in the context of this exemption, there remains a risk that the proposed exemption (if enacted) may not apply to transfers involving minority shareholders, or in other situations where the defined criteria of a holding-subsidiary relationship are not met. It is important to emphasise that this proposal pertains solely to stamp duty. As such, any capital gains tax (CGT) or other potential tax implications arising from the respective transfers would still require careful consideration.