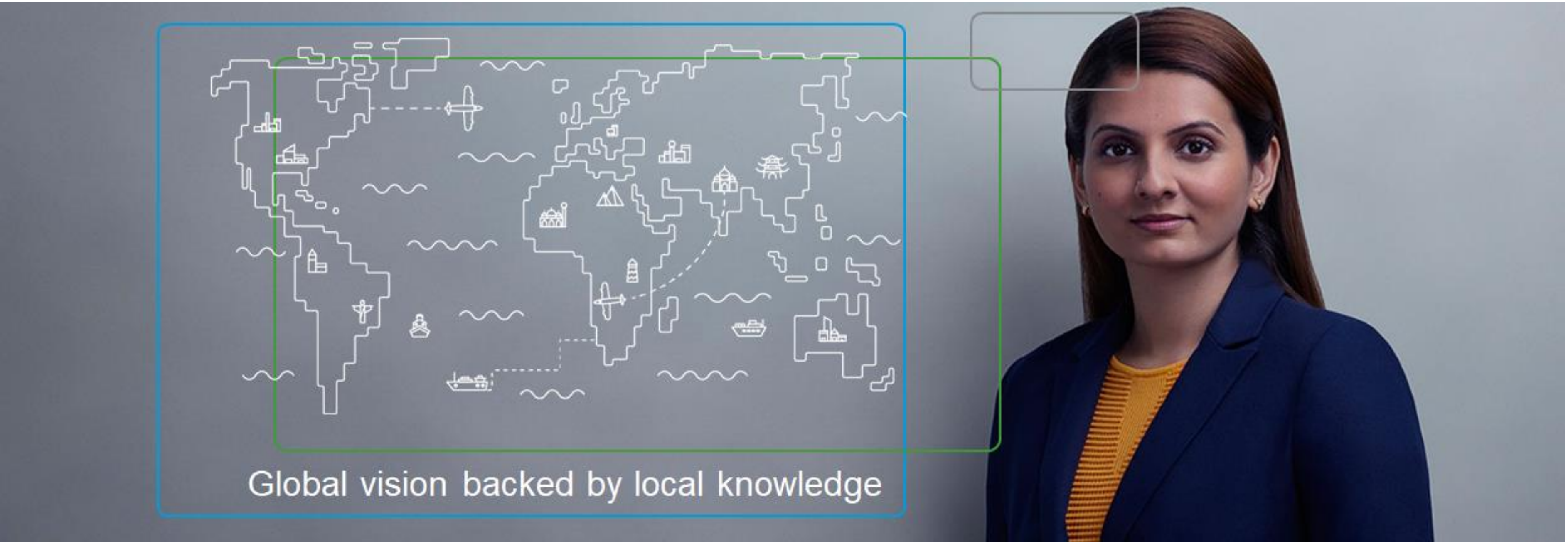
THE POWER OF BEING UNDERSTOOD

AUDIT | TAX | CONSULTING

RSM



RSM WEBINAR – BUDGET 2022/23 HIGHLIGHTS

Webinar starts at 9:05 a.m.

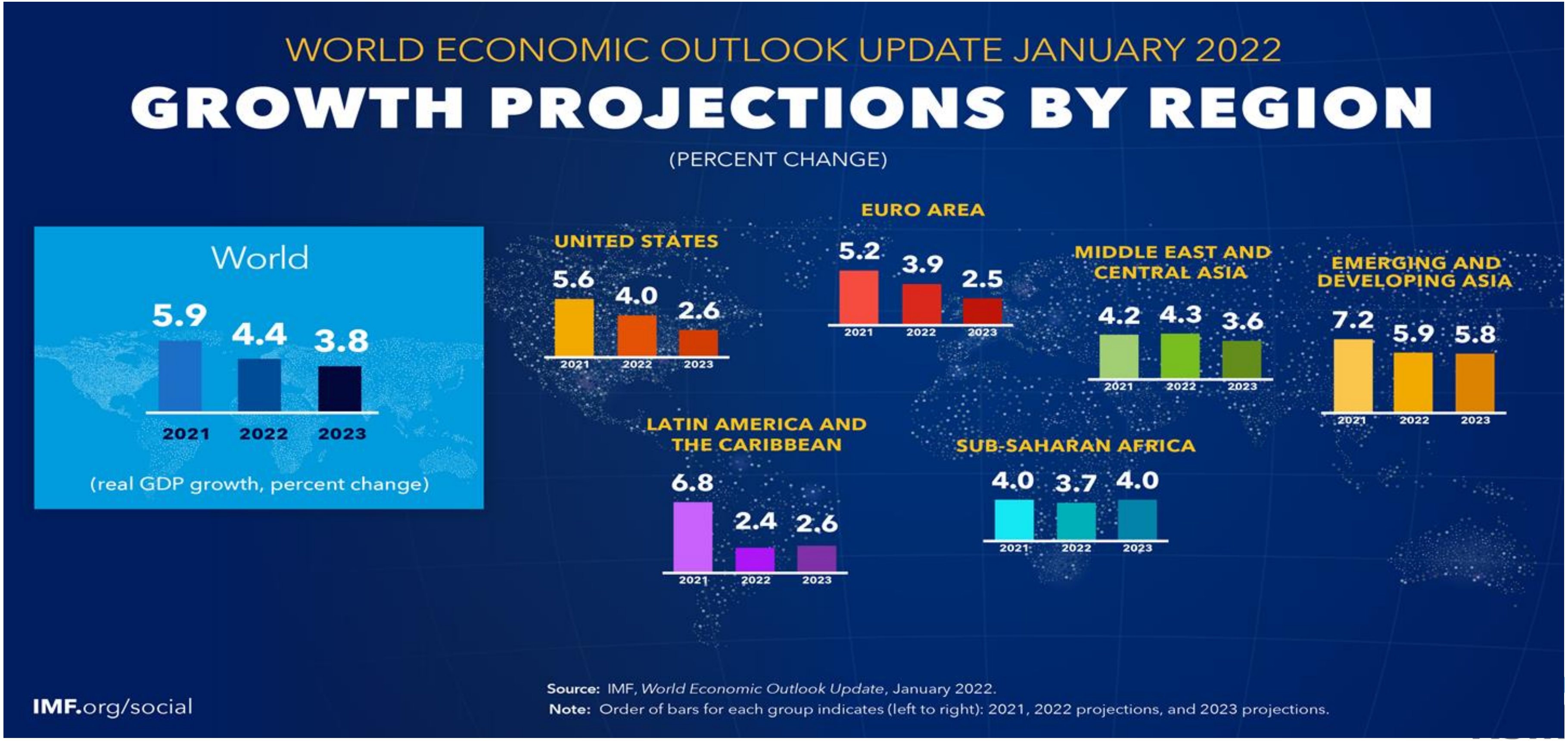
Monday 11th April 2022

AGENDA

- Global economic outlook
- End of era budget
- Key challenges facing Kenyans
- Major announcements

RSM

GLOBAL ECONOMIC OUTLOOK



ECONOMIC OVERVIEW

GLOBAL	SUB-SAHARAN AFRICA	KENYA
• The global growth is expected to reduce from 5.9% in 2021 to 4.4% in 2022 due to; ○ The war in Ukraine and economic sanctions on Russia have put global energy supplies at risk. ○ China's share of global GDP has been on the rise from 2010 however may be lower due to the effects of COVID-19 pandemic.	• Growth in the sub-Saharan African region is projected to be 3.7% in 2022 and 4% in 2023 given that; ○ High prices for food commodities like coffee and cotton will benefit agricultural exporters. ○ Higher oil prices and the gradual easing of OPEC production cuts benefiting Nigeria and Angola. ○ 2022 will embrace the DRC joining the East African Community. • Only around 8% of Africa's 1.4bn population fully vaccinated against COVID-19.	• The economy has demonstrated resilience to the COVID-19 pandemic as GDP grew by 7.6% in 2021 • Inflation is projected to remain within the CBK target range of 2.5% to 7.5%. • As international tourism faces protracted recovery, other sub-sectors such as education have bounced back stronger. • Key domestic risk sprouts from the drought conditions which are affecting parts of the country and causing severe distress.

END OF ERA BUDGET FY2022/23

PROJECTED TOTAL REVENUE
Kshs 2.4 Trillion

14% growth in projected revenue compared to FY2021/22 (2.04 trillion).

PROJECTED TOTAL EXPENDITURE
Kshs 3.3 Trillion

9% increase from the FY2021/2022 budget (Kshs. 3.03 trillion).

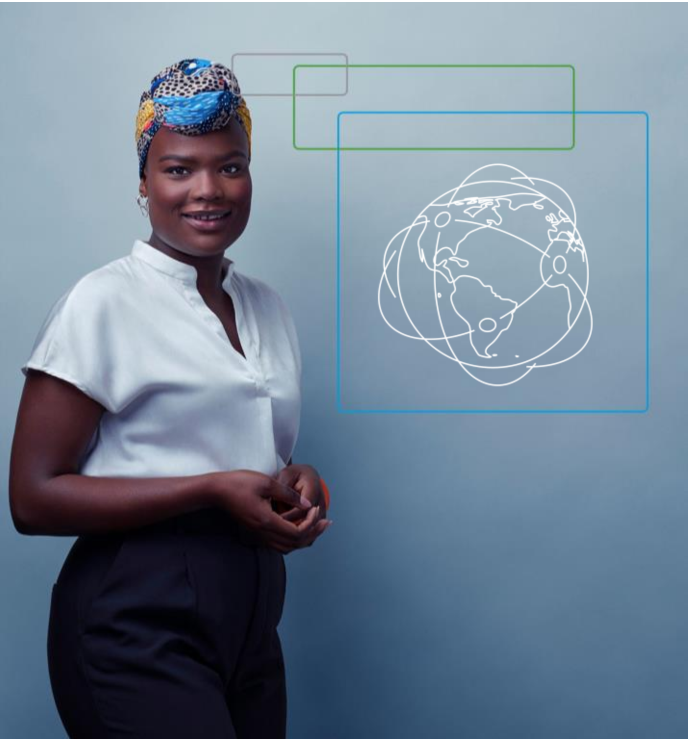
PROJECTED TOTAL DEFICIT
Kshs 862.5 Billion

7% decrease from the FY2021/2022 budget (Kshs. 929.7 billion).

BUDGETARY ALLOCATION

- The focus of the FY2022/23 budget was on the BIG FOUR agenda, education and security for the citizens and their properties.
- KShs. 544 billion allocated to education
- KShs. 317.8 billion allocated to security
- Kshs. 231.3 allocated to support the implementation of the projects and programmes under the "Big Four" Agenda.

MAIN CHALLENGES FACING KENYANS



- High cost of living
- High level of unemployment among the youths
- Income inequality
- Public debt burden

RSM

MAJOR ANNOUNCEMENTS

- Proposed amendment to the Unclaimed Financial Assets Act to provide for waiver of penalties, fines and audit fees in justifiable circumstances.
- The Government is installing a new Central Securities Depository System at the Central Bank of Kenya to support planned reforms in secondary trading of government bonds.
- Proposed amendment of the Capital Markets Act (CMA) to expand the spectrum of persons who can act as investment advisors to allow single director companies and partnerships to be licensed as investment advisors.
- Proposed amendment to the Retirement Benefits Investment Guidelines to include the unlisted Real Estates Investment Trusts incorporated in Kenya that are approved by the Capital Markets Authority.

MAJOR ANNOUNCEMENTS

- Government backed pension scheme for informal sector workers; Kenya National Entrepreneurs Savings Trust (KNEST) targeting over 15 million marginalized informal sector workers has now been registered.
- Proposed amendment to the Insurance Regulations to require motorcycles and three wheelers used by fare paying passengers to take insurance for their passengers.
- The government proposes to replace the debt ceiling with a debt anchor and set it at 55 percent of debt to GDP in present value terms.

INCOME TAX

Presented by Isaac Munyao

CAPITAL GAIN TAX (EFFECTIVE 1ST JANUARY 2023)

Proposal to increase the rate to 15%

THIN CAPITALISATION – MICROFINANCE INSTITUTIONS EXCLUDED (EFFECTIVE 1ST JULY 2022)

The Finance Bill, 2022 proposes to revises thin capitalisation provisions which were introduced by the Finance Act, 2021 to restrict the total interest claimable in a year of income to 30% of earnings before interest, taxes, depreciation and amortization ("EBITDA");

Currently, the thin capitalization provisions do not apply to:

- Banks or financial institutions licensed under the Banking Act; and
- Micro and small enterprises registered under the Micro and Small Enterprises Act, 2012.

The Bill seeks to amend the ITA to exclude microfinance institutions licensed under the Microfinance Act, 2006 from the thin capitalization provisions.

Section 2 of the Microfinance Act, 2006 defines "institution" as a deposit-taking microfinance institution licensed under this Act.

From the above provision, this change still does not cushion various non-deposit taking microfinance institutions which rely significantly on debt to finance lending.

FOREIGN EXCHANGE (EFFECTIVE 1ST JULY 2022)

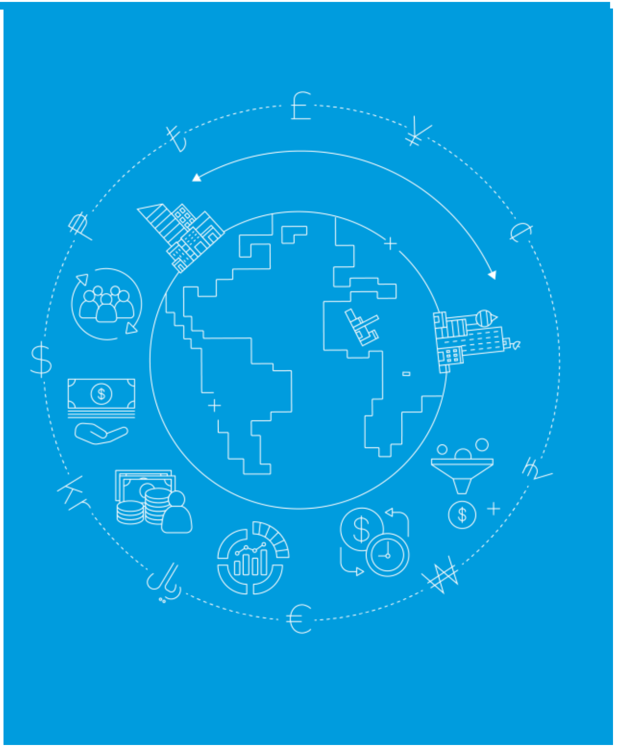
A foreign exchange gain or loss realized in a business carried on in Kenya shall be taken into account as a trading receipt or deductible expenses in computing the gains and profits of that business for the year of income in which that gain, or loss was realized:

Provided that:

The foreign exchange loss shall be deferred (and not taken into account) –

–where the foreign exchange loss is realised by the company whose gross interest paid or payable to related persons and third parties exceeds 30% of the company's earnings before interest, taxes, depreciation and amortization (EBITDA) in any financial year.

This amendment will now align the treatment for foreign exchange losses to the thin capitalisation treatment.

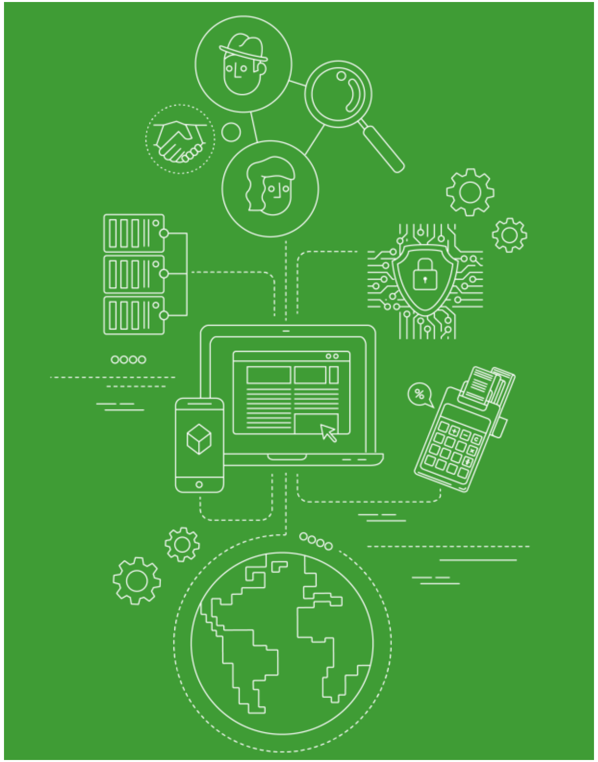


CHARITABLE DONATIONS (EFFECTIVE 1ST JULY 2022)

Any donation in that year of income to a charitable organisation whose income is exempt from tax under paragraph 10 of the First Schedule to this Act, or to any project approved by the Cabinet Secretary responsible for matters relating to finance.

Currently, Section 15(w) of the ITA provides for deduction from taxable income any cash donations to a charitable organisation registered under or exempt from registration under the Societies Act or the Non-Governmental Organisations Coordination Act.

TAXATION OF GAINS ACCRUING TO NON-RESIDENTS FROM FINANCIAL DERIVATIVES (EFFECTIVE 1ST JANUARY 2023)



Where a resident person enters into a financial derivatives contract with a non-resident person (not having permanent establishment in Kenya), any gain accruing to the non-resident person from that arrangement shall be subject to tax at the rate of 15% of the gains.

The provisions of this section shall be carried out in accordance with Regulations made by Cabinet Secretary.

Financial derivative – means 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.

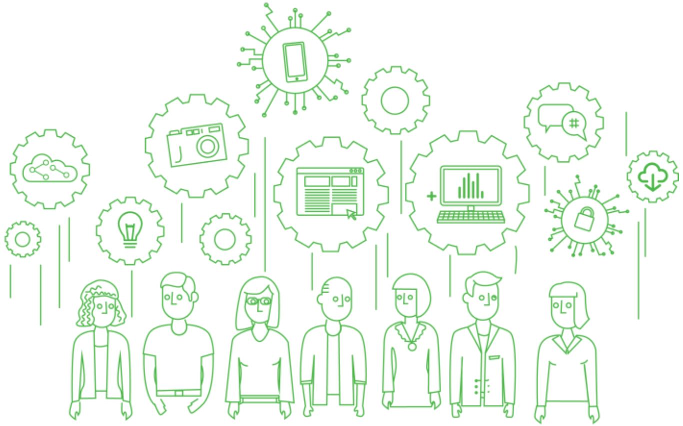
TAXATION OF DIGITAL SERVICES (EFFECTIVE 1ST JULY 2022)

Section 12E provides notwithstanding any other provision of this Act, a tax to be known as digital service tax shall be payable by a non-resident person whose income from the provision of services is derived from or accrues in Kenya through a business carried out over the internet or an electronic network including through a digital marketplace

Provided that this section shall not apply to a non-resident person with a permanent establishment in Kenya.

This amendment now clarifies that the digital services tax is only applicable to non-residents who do not have a permanent establishment in Kenya.

The rate for digital services tax will increase to 3% from 1.5%.



RSM

EXCHANGE OF INFORMATION ON TAX MATTERS (EFFECTIVE 1ST JULY 2022)

The Finance Act 2021 had introduced the provision where an ultimate parent entity of a multinational enterprise group is required to submit to the Commissioner a return describing the group's financial activities in Kenya. This provision is applicable for the year of income 2022 and subsequent years of income.

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

(a) Whether or not it is the ultimate parent entity of the group;
(b) In case it is not the ultimate parent entity of the group, whether or not it is a surrogate parent entity; or
(c) In cases paragraphs (a) and (b) do not apply, the identity of the constituent entity which is the ultimate parent entity or surrogate parent entity and the tax residence of that constituent entity.

The notification shall be made to the Commissioner in such form as the Commissioner may specify.

"surrogate parent entity" means one constituent entity of the multinational enterprise group appointed by such group to file the country-by-country report in that constituent entity's jurisdiction of tax residence, on behalf of the group.

COUNTRY BY COUNTRY REPORTING (EFFECTIVE 1ST JULY 2022)

An ultimate parent entity or a constituent entity of a multinational enterprise group with a gross turnover of Kshs 95 Billion (including extraordinary or investment income) that is resident in Kenya shall file a country by country report with the Commissioner of its financial activities in Kenya and for all other jurisdiction where the group has taxable presence.

An ultimate parent entity shall file the country-by-country report not later than twelve months after the last day of the reporting financial year of the group.

An ultimate parent entity or a constituent entity of a multinational enterprise group shall file a master file and a local file to the Commissioner in such manner as the Commissioner may specify.

The master file and the local file shall be filed not later than six months after the last day of the reporting financial year of the multinational enterprise group.

The Commissioner shall maintain the confidentiality of the information contained in a return submitted in accordance with section 6(1) and section 6A(2) of the Tax Procedures Act 2015.

A person who fails to comply with the Country-by-Country reporting commits an offence and shall be subject to the penalties prescribed under the Tax Procedures Act, 2015.

COUNTRY BY COUNTRY REPORTING (CONT'D) (EFFECTIVE 1ST JULY 2022)

A country-by-country report filed shall consist of:

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

(b) the group's aggregate information including information relating to:

- revenue;
- profit or loss before income tax;
- income tax paid;
- income tax accrued;
- stated capital;
- accumulated earnings;
- number of employees; and
- tangible assets other than cash or cash equivalents with regards to each jurisdiction where the group has taxable presence

(c) any other information as maybe required by the Commissioner.

COUNTRY BY COUNTRY REPORTING (CONT'D) (EFFECTIVE 1ST JULY 2022)

A master file shall contain –

(a) a detailed overview of the group;
(b) the group's growth engines;
(c) a description of the supply chain of the key products and services;
(d) the group's research and development policy;
(e) a description of each constituent entity's contribution to value creation;
(f) information about intangible assets and the group intercompany agreements associated with them;
(g) information on any transfer of intangible assets within the group during the tax period, including the identity of the constituent entities involved, the countries in which those intangible assets are registered and the consideration paid as part of the transfer;
(h) information about financing activities of the group;
(i) the consolidated financial statements of the group;
(j) tax rulings, if any, made in respect of the group; and
(k) any other information that the Commissioner may require.

COUNTRY BY COUNTRY REPORTING (CONT'D) (EFFECTIVE 1ST JULY 2022)

A local file shall contain –

(a) details and information on the resident constituent entity's activities within the multinational enterprise group;

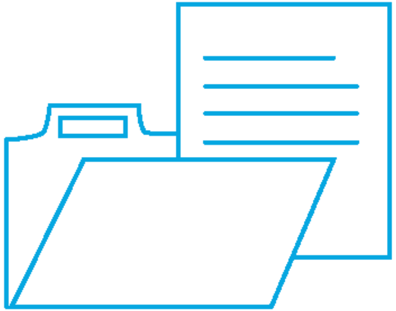
(b) management structure of the resident constituent entity;

(c) business strategies including structuring, description of the material-controlled transactions, the resident

constituent entity's business and competitive environment;

(d) the international transactions and amounts paid to the resident constituent entity or received by the entity; and

(e) any other information that the Commissioner may require.



COUNTRY BY COUNTRY REPORTING (CONT'D) (EFFECTIVE 1ST JULY 2022)

Where there are more than one constituent entities of the same multinational enterprise group that are resident in Kenya, the multinational enterprise group may designate one of such constituent entities as a surrogate parent entity.

A resident surrogate parent entity of a multinational enterprise group shall not be required to file a country-by country report with the Commissioner with respect to the reporting financial year of the group, if –

(a)the ultimate parent entity is obligated to file a country-by-country report in its jurisdiction of tax residence;

(b)the jurisdiction in which the ultimate parent entity is resident for tax purposes has an international agreement and a competent authority agreement in force; and

(c) the Commissioner has not notified the resident constituent entity in Kenya of a systemic failure, if any.

"competent authority agreement" means an agreement between authorized representatives of jurisdictions which are parties to an international agreement that requires the exchange of country-by-country reports.

COUNTRY BY COUNTRY REPORTING (CONT'D) (EFFECTIVE 1ST JULY 2022)

A resident constituent entity of a multinational enterprise group shall not be required to file a country-by-country report with the Commissioner with respect to the reporting financial year of the group, if –

(a) a non-resident surrogate parent entity files the country-by-country report on the group with the competent authority of the tax jurisdiction of the entity;

(b) the jurisdiction in which the non-resident surrogate parent entity is resident requires the filing of country-by-country reports;

(c) the competent authority of the jurisdiction in which the non-resident surrogate parent entity is resident in Kenya have a competent authority agreement for the exchange of information;

(d) the competent authority in the jurisdiction where the non-resident surrogate parent is resident has not notified Kenya of a systemic failure; or

(e) the non-resident parent entity has notified the competent authority in the jurisdiction of its tax residence that the entity is the designated surrogate parent entity of the group.

RSM

GAINS OR PROFITS OF BUSNINESS IN A PREFERENTIAL TAX REGIME (EFFECTIVE 1ST JANUARY 2023)

There is a proposal to repeal the current provision of gains or profits of business in a preferential tax regime replace it with the new provision.

Where –

(a) a resident person carries on business with a related resident person operating in a preferential tax regime; or

(b) a resident person carries on business with –

(i) a non-resident person located in a preferential tax regime; or

(ii) an associated enterprise of a non resident person located in a preferential tax regime; or

(iii) a permanent establishment of a non-resident person operating in Kenya where the non resident person is located in a preferential tax regime

and the business produces no gains or produces less gains than those which would have been expected to accrue from that business if the business activity was not with a party in a preferential tax regime, the gains of that resident person from that business shall be deemed to be the amount which would have been expected to accrue if that business had been conducted by an independent person dealing at arm's length, or if none of the parties were located in a preferential tax regime.

GAINS OR PROFITS OF BUSNINESS IN A PREFERENTIAL TAX REGIME (CONT'D) (EFFECTIVE 1ST JANUARY 2023)

The definition of preferential tax regime has been amended to read:

"preferential tax regime" means –

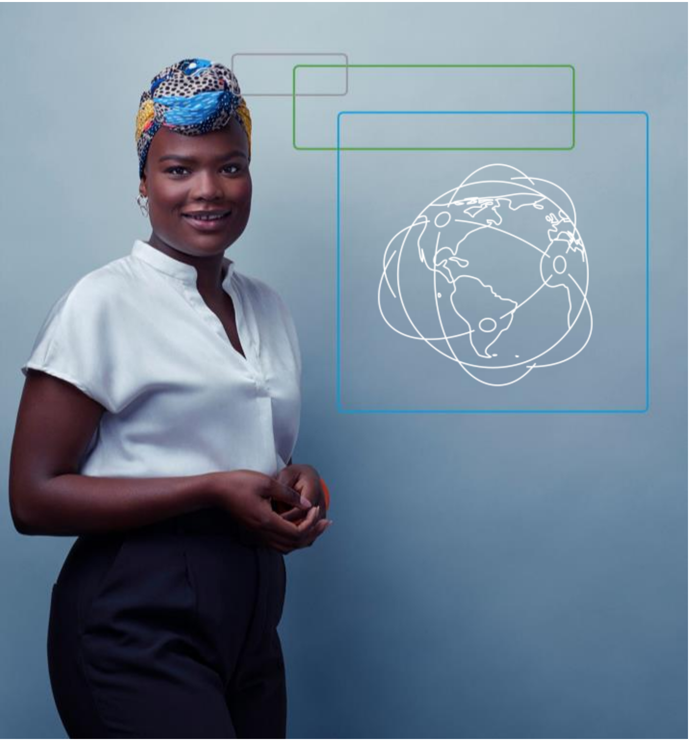
(a) any Kenyan legislation, regulation or administrative practice which provides a preferential rate of tax to such income or profit, including reductions in the tax rate or the tax base; or

(b) a foreign jurisdiction which –

- (i) does not tax income;
- (ii) taxes income at a rate that is less than twenty per cent;
- (iii) does not have a framework for the exchange of information;
- (iv) does not allow access to banking information; or
- (v) lacks transparency on corporate structure, ownership of legal entities located therein, beneficial owners of income or capital, financial disclosure, or regulatory supervision.

RSM

INVESTMENT DEDUCTIONS(EFFECTIVE 1ST JULY 2022)



The Finance Bill 2022 proposes to clarify that investment deductions for those outside Nairobi shall only apply to:

- Hotel buildings
- Building used for manufacture
- Machinery used for manufacture

Investment deductions shall not apply to investments which, due to the nature of their business, have to be located in places which are outside Nairobi City county and Mombasa county – does not include subsidiary investments.

RSM

TAXATION OF REGSTERED FAMILY TRUSTS(EFFECTIVE 1ST JULY 2022)

- Proposal is to remove the exemption from tax of income or principal sum of a registered family trust and therefore the income or principal sum of a registered family trust will now be taxable.
- The Finance Act, 2021 had introduced the taxation of registered trusts to apply to:
  - any amount that is paid out of the trust income on behalf of any beneficiary and is used exclusively for the purpose of education, medical treatment or early adulthood housing;
  - income paid to any beneficiary which is collectively below ten million shillings in the year of income;
  - any distribution over this to be taxed at 25%.

The deletion of the above provisions is to tax all income of a family trust and therefore there is no further tax on distribution.

OTHER INCOME TAX CHANGES

- Definition of permanent home – means 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 closest – effective 1st July 2022

- Definition of fair market value – means 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 – effective 1st July 2022

RSM

OTHER INCOME TAX CHANGES (CONT'D)

- Change to employee share ownership plan – the value of the benefit shall be the higher of the cost to the employer or the fair market value of the benefit

Provided that–

in the case of an employee share ownership plan, the value of the benefit shall be the difference between the offer price per share, at the date the option is granted by the employer, and the market value, per share on the date when the employee exercises the option – effective 1st July 2022.

- The other change is that the employee share ownership plan does no longer need to be registered with the Commissioner as a collective investment scheme within the meaning of Capital Markets Authority Act and will now be deemed to have accrued on the date the employee exercises the option and not at the end of the vesting period – effective 1st July 2022.

VALUE ADDED TAX

Presented by Lucas Kihara

RSM

AMENDMENTS TO VAT ON DIGITAL SERVICES (EFFECTIVE 1ST JULY 2022)

Previous definition

Digital marketplace means an online platform which enables users to sell or provide services, goods or other property to other users.

Amended definition

Digital marketplace means an online platform which enables users to ~~sell or provide services, goods or other property~~ sell goods or provide services.

Registration requirements

The provisions relating to registration of resident person do not apply to persons supplying imported digital services over the internet or an electronic network or through a digital marketplace as the non-resident persons will be required to register for VAT regardless of their turnover.

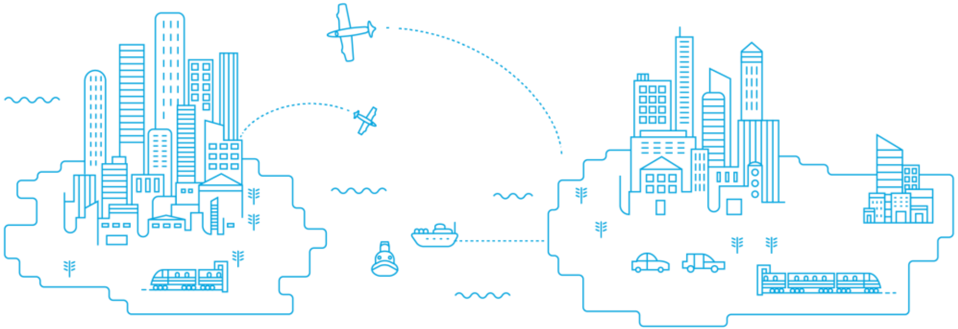
RSM

TREATMENT OF IMPORTED SERVICES (EFFECTIVE 1ST JULY 2022)

Section 10(1) of the VAT Act states that if a supply of imported taxable services is made to any person, the person shall be deemed to have made a taxable supply to himself (reverse VAT).

The Bill proposes to exempt the applicability of reverse VAT provisions on taxable supplies made over the internet or an electronic network or through a digital marketplace.

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



RSM

DOCUMENTS REQUIRED FOR DEDUCTION OF INPUT TAX (EFFECTIVE 1ST JULY 2022)

A registered person is required to have an original tax invoice, a duly certified custom entry form and receipt of payment of tax at the point of claiming input VAT.

In addition to the above documentation, the Bill proposes to give the Commissioner the discretion to require any such documentation that the Commissioner may deem fit before claiming a deduction of input VAT.

In our view, we believe that the above proposed amendment seeks to address missing trader issues, where the Revenue Authority required those taxpayers to provide proof of payment of those goods or services to demonstrate that they were actual supplies incurred in the furtherance of business.

RSM

PENALTIES AND INTEREST RELATING TO IMPORTATION OF GOODS (EFFECTIVE 1ST JULY 2022)

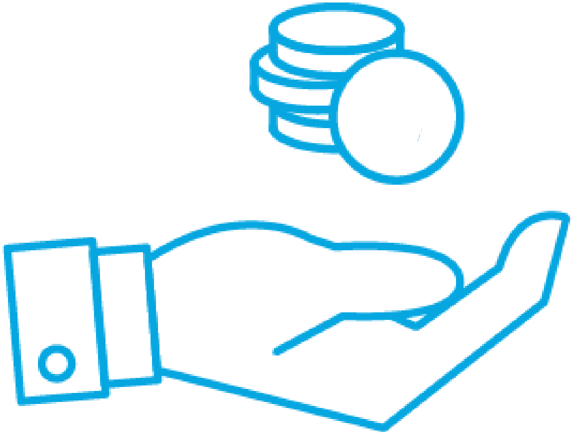
Section 22 of the VAT Act deals with the imposition of VAT on the importation of goods by land, air or water.

The Bill proposes to impose penalties and interest in line with the provisions of the Tax Procedures Act, 2015 for late payment of VAT on importation of goods, and the late payment interest charge shall not exceed the principal VAT due on the imported goods.

REFUND OF TAX PAID IN ERROR (EFFECTIVE 1ST JULY 2022)

The provisions relating to refund application of tax paid in error has been deleted and moved to the Tax Procedures Act, 2015.

A taxpayer will be required to apply for a refund of the tax paid in error within 6 months, in relation to VAT, and 5years for other taxes, and the taxpayer will be allowed to apply the use of refund of tax paid in error to offset any other liabilities due / payable instead of refund.



AMENDMENTS TO THE FIRST AND SECOND SCHEDULE (EFFECTIVE 1ST JULY 2022)

Supplies	New Rate	Old Rate
63. Taxable goods and services for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption – current exempt projects to be exempt until project completion)	16%	Exempt
22. The supply of maize(corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight. (deletion of paragraph 108 of Part I Section A of the First Schedule and paragraph 20 of Part A of the Second Schedule)	0%	0%

AMENDMENTS TO THE FIRST AND SECOND SCHEDULE (EFFECTIVE 1ST JULY 2022)

Supplies	New Rate	Old Rate
137. Sustainable fuel briquettes and **pellets** or household and commercial use (pellets added to the section)	Exempt	Exempt
140. Plant and machinery of chapter 84 and 85 imported by manufacturers of pharmaceutical products or investors in the manufacture of pharmaceutical products upon the recommendation of the Cabinet Secretary responsible for matters relating health.	Exempt	16%
141. Medical oxygen supplied to registered hospitals.	Exempt	16%
142. Urine bags, adult diapers, artificial breasts, colostomy or ileostomy bags for medical use.	Exempt	16%

AMENDMENTS TO THE FIRST AND SECOND SCHEDULE (EFFECTIVE 1ST JULY 2022)

Supplies	New Rate	Old Rate
143. Inputs and raw materials used in the manufacture of passenger motor vehicles.	Exempt	16%
144. Locally Manufactured passenger motor vehicles: Provided that in this paragraph "locally manufactured passenger motor vehicle" shall mean a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose total value comprises at least thirty per cent of parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.	Exempt	16%

RSM

AMENDMENTS TO THE FIRST AND SECOND SCHEDULE (EFFECTIVE 1ST JULY 2022)

Supplies	New Rate	Old Rate
27. Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon recommendation by the Cabinet Secretary responsible for health, who shall issue guidelines for the criteria to determine the eligibility for the exemption.	16%	Exempt
9. Supply of Protective Apparel, Clothing Accessories and Equipment. Articles of apparel, clothing accessories and equipment specially designed for safety or protective purposes for use in registered hospitals and clinics or by county government or local authorities in firefighting.	16%	0%

RSM

EXCISE DUTY ACT

Presented by Lucas Kihara

RSM

ANNUAL INFLATIONARY ADJUSTMENT OF EXCISE DUTY RATES (EFFECTIVE 1ST JANUARY 2023)

The new proposal seeks to empower the Commissioner to exempt from this requirement certain products depending on the prevailing economic circumstances.

Inflation adjustment on specific rates of excisable goods was introduced by Section 10 the Excise Tax Act, 2015 which currently provides that:

'the Commissioner may, with the approval of the Cabinet Secretary, by notice in the Gazette, adjust the specific rate of excise duty once every year to take into account inflation in accordance with the formula specified in Part 1 of the First Schedule'.

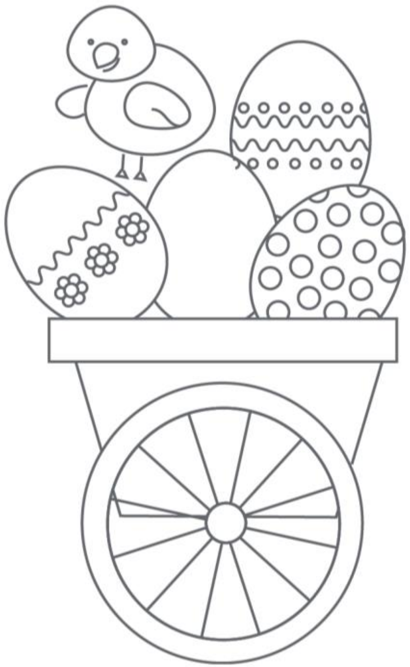
The proposed amendment if passed, will be a welcome addition, as it will provide a buffer against price increases of certain products that the Commissioner may exempt from inflationary adjustments of excise duty.

EXCISE DUTY ON IMPORTED EGGS (EFFECTIVE 1ST JULY 2022)

The new proposal seeks to exempt from excise duty fertilized eggs of tariff numbers 0407.11 and 0407.19 eggs for hatching imported by licensed hatcheries upon approval by the responsible CS.

Currently, the Excise Duty Act, 2015 as amended by the Finance Act, 2021 provided excise duty at 25% on all imported eggs of tariff 04.07.

If passed, the proposal will cushion licenced hatcheries against increased importation costs as consequent to the current 25% excise duty.



EXEMPTION ON NEUTRAL SPIRIT USED FOR MANUFACTURE OF PHARMACEUTICAL PRODUCTS (EFFECTIVE 1ST JULY 2022)

The new proposal seeks to exempt from excise duty spirits of undenatured ethyl alcohol (neutral spirit) used in manufacture of pharmaceutical products.

Currently, the spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6% are subject to excise duty at Ksh 253 per litre.

RSM

EXEMPTION ON LOCALLY MANUFACTURED PASSENGER MOTOR VEHICLES(EFFECTIVE 1ST JULY 2022)

The new proposal seeks to exempt from excise duty locally manufactured passenger motor vehicles.

Currently, Motor vehicles of tariff heading 87.02, 87.03 and 87.04 are subject to excise duty at 20% with the exception of—

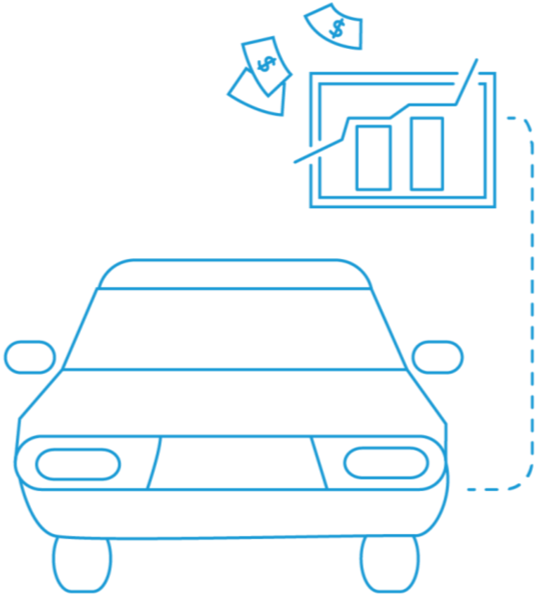
a) locally assembled motor vehicles;

b) school buses for use by public schools;

c) motor vehicles of tariff no. 8703 .24 .90 and 8703 .33 .90; and

d) imported motor vehicles of cylinder capacity exceeding 1500cc.

This move will promote investment in local assembly and manufacture of passenger motor vehicles.



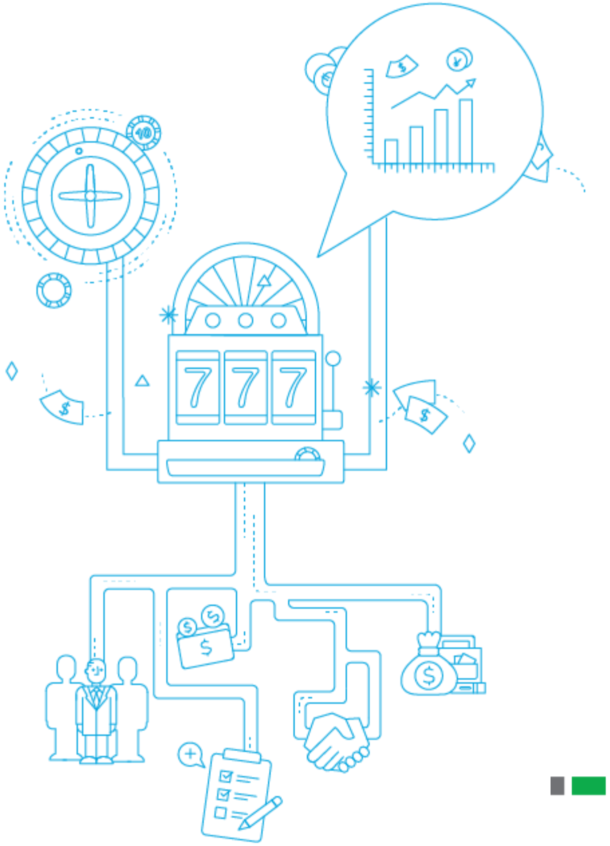
RSM

INTRODUCTION OF EXCISE DUTY ON FEES CHARGED ON ADVERTISING OF ALCOHOL, GAMBLING AND GAMING ACTIVITIES (EFFECTIVE 1ST JULY 2022)

The new proposal seeks to charge 15% excise duty on fees charged on promotion of alcohol, gambling and gaming activities.

Currently, no excise duty is chargeable on advertising and media fees relating to promotion of alcohol, gambling and gaming activities.

This is a sin tax with a motive of reducing awareness to discourage consumption of these 'harmful activities' by making it expensive to advertise these products.



RSM

EXCISE DUTY CHARGEABLE ON LIQUID NICOTINE (EFFECTIVE 1ST JULY 2022)

The new proposal seeks to change the current taxation regime specifically for liquid nicotine by charging KShs 70 per millilitre.

Currently, 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 are subject to an excise duty of 1,200 per kg.

The proposal if passed will make consumption of the products expensive and discourage their consumption.

DEFINITION OF EX-FACTORY SELLING PRICE (EFFECTIVE 1ST JULY 2022)

The new proposal seeks to amend Section 11 (a) of the excise duty act by deleting the words "other than to a purchaser".

Currently, Section 11 (a) provides that:

The ex-factory selling price of excisable goods shall be—

a) if the excisable goods are sold by the manufacturer, other than to a purchaser in an arm's length transaction, the price payable by the purchaser;

This deletion implies that the ex-factory selling price for controlled transactions at arm's length will be the price payable by the purchaser

RSM

ENFORCEMENT OF EXCISE DUTY PAYMENTS ON IMPORTATION OF GOODS (EFFECTIVE 1ST JULY 2022)

The new proposal seeks to bring into scope the provisions of Tax procedures Act on imposition of penalties and interest relating to excise duty.

The proposal also provides that where interest is charged, such interest should not exceed the principal tax due.

Currently, Section 36(4) provides that: *For assessing, collecting, accounting and enforcing the payment of excise duty on the importation of goods into Kenya, the East African Community Customs Management Act, 2005 shall apply as if excise duty were customs duty*.

The amendment if passed will bring clarity on the chargeability penalties and interest on excise duty amounts due.

RSM

EXCISE DUTY ON GLASS BOTTLES AND PLASTICS (EFFECTIVE 1ST JULY 2022)

The new proposal seeks to introduce excise duty on all glass bottles (excluding glass bottles for packaging of pharmaceutical products) at 25%.

Currently, excise duty is only applicable on imported glass bottles (excluding glass bottles for packaging of pharmaceutical products) and imports from the East African community members.

If passed, the amendment will lead to increased prices of all glass bottles both imported and locally produced.

The new proposal seeks to introduce excise duty on plastics of tariff 3923.90.90 at 10%.

Currently, only carboys, bottles, flasks and similar articles classified under tariff 3923.30.00 are subject to excise duty at 10%.

RSM

EXCISE DUTY ON IMPORTED POTATOES, POTATO CRISPS, POTATO CHIPS AND ELECTRONIC CIGARETTES (EFFECTIVE 1ST JULY 2022)

The new proposal seeks to introduce excise duty at 25% on potatoes of tariff 0710.10.00, 2004.10.00 and 2005.20.00

Currently, only potatoes, fresh or chilled of tariff 07.01 were subject to excise duty at 25%

If passed, the new proposal will introduce excise duty on all imported potatoes thus increased prices.

The new proposal seeks to change the description to include other nicotine delivery devices and charge excise duty at 40%.

Currently, electronic cigarettes were excisable at Ksh 3,787 per unit

The proposal if passed will see an introduction of excise duty on nicotine delivery devices

AMENDMENTS TO PART I OF THE FIRST SCHEDULE (EFFECTIVE 1ST JULY 2022)

Item	New Rate	Old 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	Ksh 13.30 per litre	Ksh 12.17 per litre
Cosmetics and Beauty products of tariff heading No.3303, 3304,3305 and 3307	15%	10%
Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices	Ksh 6.60 per Litre	Ksh 6.03 per Litre

AMENDMENTS TO PART I OF THE FIRST SCHEDULE (EFFECTIVE 1ST JULY 2022)

Item	New Rate	Old Rate
Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%"	Ksh 134 per litre	Ksh 121.85 per litre
Powdered beer	Ksh 134 per litre	Ksh 121.85 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Ksh 229 per litre	Ksh 208.20 per litre

RSM

AMENDMENTS TO PART I OF THE FIRST SCHEDULE (EFFECTIVE 1ST JULY 2022)

Item	New Rate	Old Rate
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%	Ksh 335.30 per litre	Ksh 278.70 per litre
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Ksh 13,296.6 per kg	Ksh 13,906.04 per kg
Cigarette with filters (hinge lid and soft cap)	Ksh 3,825.99 per mille	Ksh 3,447.61 per mille

AMENDMENTS TO PART I OF THE FIRST SCHEDULE (EFFECTIVE 1ST JULY 2022)

Item	New Rate	Old Rate
Cigarettes without filters (plain cigarettes)	Ksh 2,752.97	Ksh 2,502.74
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	Ksh 10,707.88 per kg	Ksh 9,734.45 per kg
Motorcycles of tariff no. 8711 other than motorcycle ambulances and locally assembled motorcycles	Ksh 13,403.64 per unit	Ksh 12,185.16 per unit

RSM

AMENDMENTS TO PART I OF THE FIRST SCHEDULE (EFFECTIVE 1ST JULY 2022)

Item	New Rate	Old Rate
Cigarettes without filters (plain cigarettes)	Ksh 2,752.97	Ksh 2,502.74
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	Ksh 10,707.88 per kg	Ksh 9,734.45 per kg
Motorcycles of tariff no. 8711 other than motorcycle ambulances and locally assembled motorcycles	Ksh 13,403.64 per unit	Ksh 12,185.16 per unit

RSM

AMENDMENTS TO PART I OF THE FIRST SCHEDULE (EFFECTIVE 1ST JULY 2022)

Item	New Rate	Old Rate
Imported sugar confectionary of tariff heading 17.04	Ksh 40.37 per kg	Ksh 36.74 per kg
White chocolate, chocolate in blocks, slabs or bars of tariff nos. 1806.31.00, 1806.32.00, and 1806.90.00	Ksh 242.29 per kg	Ksh 200 per kg.
Jewellery of tariff heading 7113 and imported jewellery of tariff heading 7117	15%	10%
Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences	Ksh 2,500	Ksh 1,200

RSM

AMENDMENTS TO PART I OF THE FIRST SCHEDULE (EFFECTIVE 1ST JULY 2022)

Item	New Rate	Old Rate
Ice cream and other edible ice whether or not containing cocoa of tariff number 2105.00.00	15%	0%
Excise duty on betting	20%	7.50%
Excise duty on gaming	20%	7.50%
Excise duty on price competition	20%	7.50%
Excise duty on lottery (excluding charitable lotteries)	20%	7.50%

RSM

TAX PROCEDURES ACT

Presented by Isaac Munyao

SUPPLY OF INFORMATION UPON CHANGE IN PARTICULARS OF TRUSTS (EFFECTIVE 1ST JULY 2022)

The Bill proposes to amend the Section 9(1)(b) of the Tax Procedures Act, 2015 to require the notification of change of particulars of trusts, whether the trust is carrying out any business or not.

Previous provision and *amended provision*

Every person carrying on business shall , within 30 days of the occurrence of the change, notify the Commissioner of any changes –

(a) In the place of business, trading name and registered address;

(b) In the case of –

(iii) A trust, the full identity and address details of trustees and beneficiaries of the trust, *whether the entity is carrying out business or not.*

EXPANSION OF DEFINTION OF SECURITY ON PROPERTY FOR UNPAID TAX (EFFECTIVE 1ST JULY 2022)

The Bill proposes the following amendments to the Tax Procedures Act, 2015 in relation to security on property for any unpaid tax:

- The definition of "property" for which the Commissioner may use as security of unpaid taxes has now been expanded to include land or building, aircraft, ship, motor vehicle, or any other property.
- A taxpayer will be required to settle the outstanding taxes within 2 months after the Commissioner has notified the taxpayer that he has attached the property as security for unpaid tax with the various property Registrars / Director Generals, failure to which the Commissioner will be allowed to auction the property at the taxpayer's cost to collect the unpaid taxes.

RSM

OFFSET OR REFUND OF OVERPAID TAX (EFFECTIVE 1ST JULY 2022)

The following are proposed amendments to the Tax Procedures Act, 2015 with regards to overpaid taxes.

- A person may request for an offset of tax liabilities with overpaid tax specifically, where a person has overpaid instalment taxes, the overpaid tax may be used to offset future instalment tax liability.
- Where a taxpayer prefers a refund of overpaid tax, the same will be receivable by a taxpayer within 2 years from the date of application.
- The refund application timeline for Value Added Tax has been reduced to 6 months from 2 years. This may be in contradiction as the VAT Act, 2013 still provides 2 years for the application of the refund of excess tax.

RSM

REFUND OF TAX PAID IN ERROR (EFFECTIVE 1ST JULY 2022)

The Bill seeks to amend Section 47A of the Tax Procedures Act, 2015 by introducing a provision where a person may be allowed to apply for a refund taxes paid in error.

- Additionally, a person will be allowed to apply for a refund of tax paid in error in relation to a zero-rated or exempt supply and such exemption or zero rating was not processed within the specified period due to circumstances beyond the control of the taxpayer.
- The time limit of the application for the above refund of tax paid in error will be:
  - 6 months, in relation to VAT; and
  - 5 years in relation to other taxes.
- A person may apply credits relating to tax paid in error against other taxes due to the Revenue Authority.

OBJECTION TO TAX DECISION (EFFECTIVE 1ST JULY 2022)

The Bill proposes the following amendments with regards to taxpayer objections:

- Extension of time for the Commissioner to notify taxpayers of the validity of the objection to 14 days instead of immediately when the objection is lodged.
- Where a taxpayer applies for an extension of time to object based on a just cause, the Commissioner shall provide a taxpayer with his decision within 14 days after receipt of the application.
- The Commissioner shall provide an objection decision within 60 days from the receipt of a valid notice of objection. The Act currently does not specify the number of times that the Commissioner can request for such information on a particular case prolonging the determination of tax disputes as additional information can be requested severally and any request for additional information provides the Commissioner with an additional 60 days to make a decision.
- The amendment has deleted the proviso that failure of the Commissioner to provide an objection decision meant that the objection was allowed. This deletion now means that the taxpayer can no longer assume after the 60 days lapse that objection has been allowed.

TRANSACTIONS FOR WHICH A PIN IS REQUIRED – TRUSTS (EFFECTIVE 1ST JULY 2022)

The Bill proposes the requirement of a PIN for registration of a trusts.

No clarification has been provided on whether the PINs required are the trustee PINs or the PINs of the sponsors and beneficiaries.

TAX APPEALS TRIBUNAL ACT

Presented by Isaac Munyao

RSM

REQUIREMENT FOR DEPOSIT OF 50% OF THE DISPUTED TAX (EFFECTIVE 1ST JULY 2022)

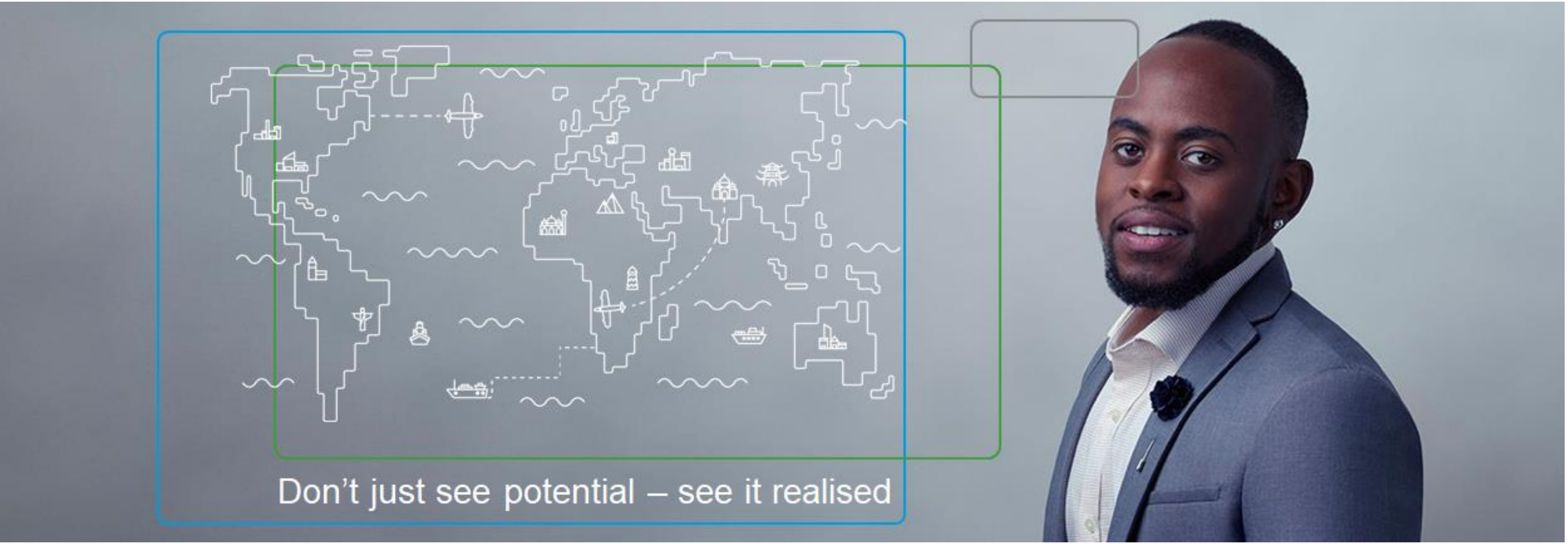
Taxpayers will be required to deposit 50% of the disputed tax that is appealed by a taxpayer from a decision of the Tax Appeals Tribunal to the High Court. This will be deposited in a special account with the Central Bank of Kenya in favor of the Commissioner.

The same requirement is not required of the Commissioner.

Where a taxpayer receives judgement in his or her favor on final determination of the matter, the deposit shall be refunded to the taxpayer within 30 days after the final determination of the matter by the Courts.

This provision undermines the right of a taxpayer under the Constitution as it reduces the powers of the taxpayer to appeal on matters that may be upheld by the higher Courts.

It does not also address cases which go in the favor of the taxpayer at the High Court level and are subsequently appealed by the KRA.



MISCELLANEOUS AMENDMENTS

Presented by Elvis Ogeto

MISCELLANEOUS FEES AND LEVIES ACT, 2016

REDUCTION OF EXPORT LEVY ON HIDES AND SKINS (EFFECTIVE 1ST JULY, 2022)

- The proposal seeks to reduce export levy on hides and skins of various categories from 80% or USD 0.5 per Kg to 50% or USD 0.32 per kg.
- This reduction is aimed at supporting farmers who rear cows as well as pastoralist communities who depend on sale of hides and skins.
- The Act is amended to ensure that Tax Procedures Act is applicable in respect of levying of penalties and interest on fees and levies that remain unpaid. Previously levies was missing from the provision.
- Export levy of USD 175 per ton introduced on iron ores and concentrates, including roaster iron pyrites.

MISCELLANEOUS FEES AND LEVIES ACT, 2016 (CONTINUED)

CHANGE OF DATE FOR INFLATION ADJUSTMENT (EFFECTIVE 1^{ST} JULY, 2022)

- The proposal seeks to change the date of annual inflation adjustment for goods subject to Export Levy from beginning of every financial year to a date not later than 1^{st} October of every financial year.

RSM

MISCELLANEOUS FEES AND LEVIES ACT, 2016 (CONTINUED)

EXEMPTION OF PHARMACEUTICAL INPUTS AND RAW MATERIALS FROM RDL AND IDF (EFFECTIVE 1ST JULY, 2022)

- The proposes seeks to exempt inputs and raw materials imported by manufacturers of pharmaceutical products from payment of Import Declaration Fees ("IDF") and Railway Development Levy ("RDL") upon recommendation by the Cabinet Secretary responsible for matters relating to health.
- Currently these are subjected to IDF and RDL at rates of 3.5 per cent and 2 percent respectively.
- This is aimed at promoting manufacturing of pharmaceutical products in order to improve access to affordable health care services.

RSM

CAPITAL MARKETS AUTHORITY ACT

EXPANSION OF PERSONS WHO CAN ACT AS INVESTMENT ADVISORS (EFFECTIVE 1ST JULY, 2022)

- Proposed amendment to expand the spectrum of persons who can act as investment advisors to include single director companies and partnerships to be licensed as investment advisors.
- Currently, there is a restriction on a bona fide officer, director, trustee, member of an advisory board and an employee of a company.
- This amendment seeks to allow more investment advisors to offer investment advisory services and hence spur economic growth.

RSM

INSURANCE ACT

AMENDMENT TO INSURANCE REGULATIONS

- Proposal to amend the Insurance Regulations to require motorcycles and three-wheelers used by fare paying passengers to take insurance for their passengers.

- This seeks to introduce insurance cover to cater for any treatment in case of injuries or compensation in case of death or any damage caused by an accident involving motorcycles and three-wheelers.

- We expect the CS Treasury to amend Insurance Regulations to accommodate this change as stated in his Budget Statement.

RSM

UNCLAIMED FINANCIAL ASSETS ACT

INTRODUCTION OF WAIVER AND VOLUNTARY DISCLOSURE PROGRAM (EFFECTIVE 1ST JULY, 2022)

- Proposed amendment to provide for waiver of penalties, fines and audit fees in justifiable circumstances as well as to cap accumulation of penalties and interest to the value of the asset.
- Further, the amendment proposes a 12-month Voluntary Disclosure Program to grant relief of penalties on the unclaimed financial assets declared and delivered in the next 12 months from 1st July 2022 and shall apply for assets held up to 30th June 2022 .
- This move is meant to address cases where the penalty and interest of the asset may increase beyond the value of the asset thus discouraging compliance.

RSM

RETIREMENT BENEFITS ACT

AMENDMENT TO RETIREMENT BENEFITS INVESTMENT GUIDELINES

- There is a proposed amendment to include the unlisted real estate investment trusts incorporated in Kenya, which are approved by the Capital Markets Authority in the category where pension schemes can invest their funds.

- This will widen the scope of investments where pension schemes can invest their funds.

- We expect the CS Treasury to amend Retirement Benefit Investment Guidelines to accommodate this change as stated in his Budget Statement.

RSM

STATUTORY INSTRUMENTS ACT

PROPOSAL TO EXEMPT TAX RELATED TAX LAWS FROM AUTOMATIC EXPIRY (EFFECTIVE 1ST JULY, 2022)

- Proposal to amend Statutory Instruments Act to exempt tax related regulations under various tax laws from automatic expiry.

- The Act currently provides for automatic expiry of statutory instruments after ten years from the date of their publication.

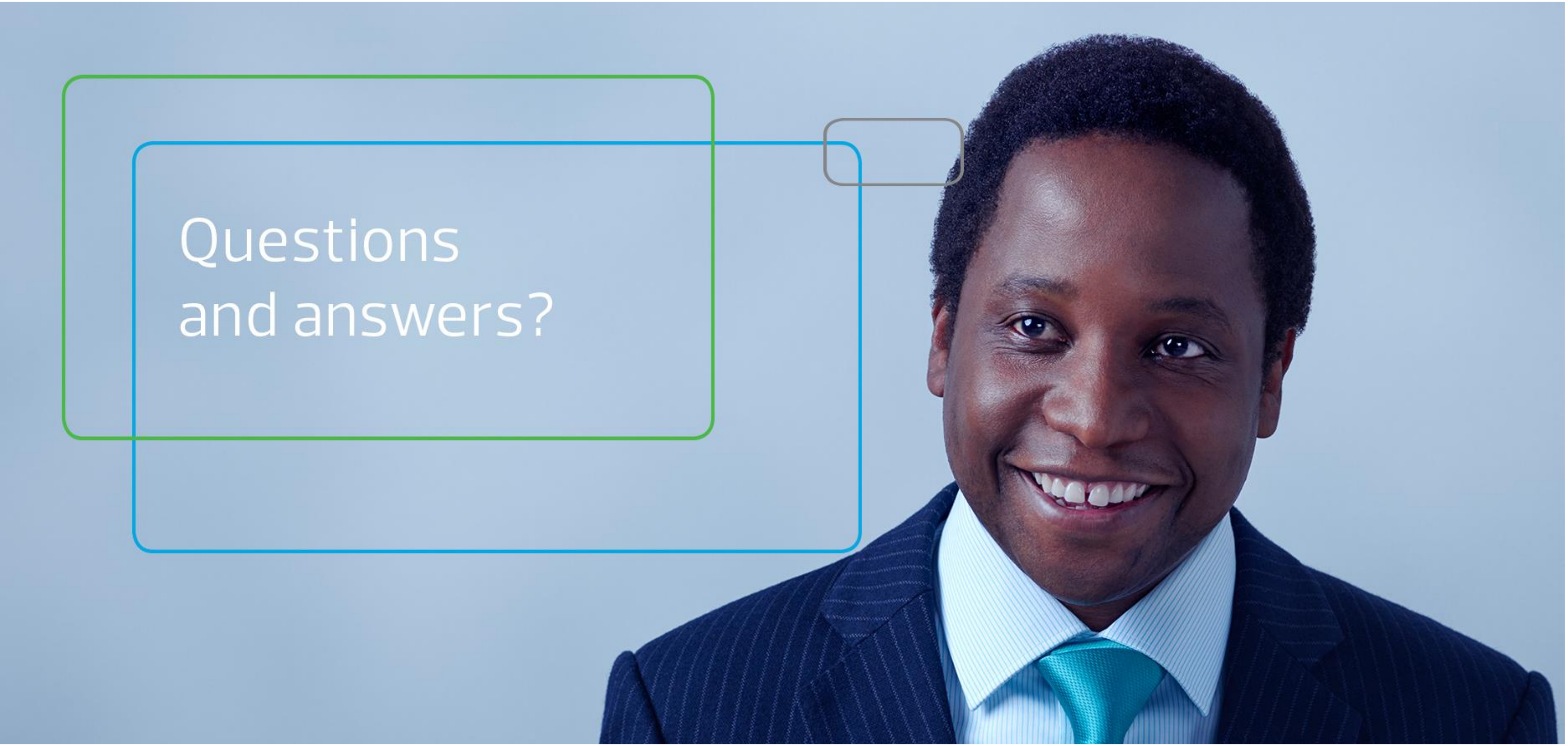
- The amendment will therefore prevent any negative effect on tax administration and revenue collection that would arise upon expiry of the instruments.

RSM

KENYA REVENUE AUTHORITY ACT

CHANGE OF NAME

- There is a proposed amendment to change the name of the revenue collecting authority from Kenya Revenue Authority ("KRA") to Kenya Revenue Services ("KRS")
- It is worth noting that this proposal was highlighted by the CS in his statement but has not been featured in the Finance Bill, 2022.


Questions
and answers?

Thank you for your time and attention

RSM

RSM EASTERN AFRICA

About us

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING

PURPOSE

- At RSM, we deliver The Power of Being Understood to our clients, colleagues and the community

DISTINGUISHING BELIEFS

- Collaboration
- Understanding
- Ideas and Insight

OUR PROMISE

- Get it right first time
- Guaranteed delivery on time and scope
- Leadership accessibility

RESPECT

treat others as we would like to be treated

We display respect in each Interaction with:

Clients
Employees
Partners

INTEGRITY

do the right thing

We stay true to our beliefs in:

Decisions
Negotiations
Communications

TEAMWORK

work together effectively

We cultivate genuine collaboration:

In work groups
Across member firms
Across functions
Amongst leaders

EXCELLENCE

be the best in everything we do

We achieve distinction through:

Our standards
Our operations
The work we deliver

STEWARDSHIP

better our network and members, and develop our people

We make RSM a better place by:

Developing our people
Building our brand
Supporting our communities

KNOWLEDGE

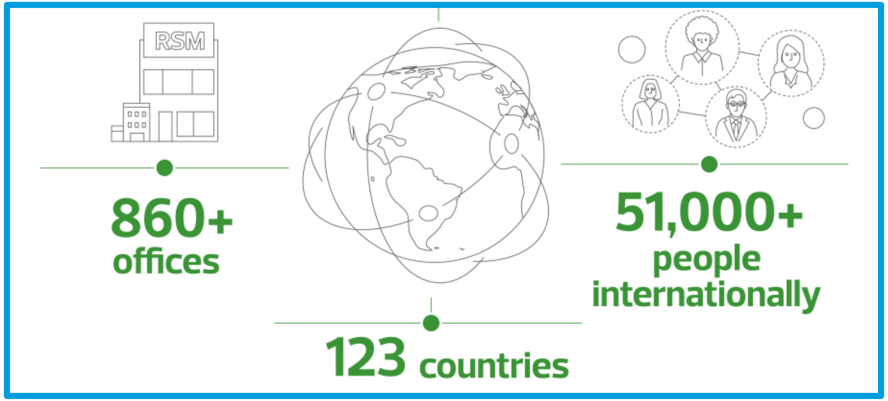
being innovative and inquisitive

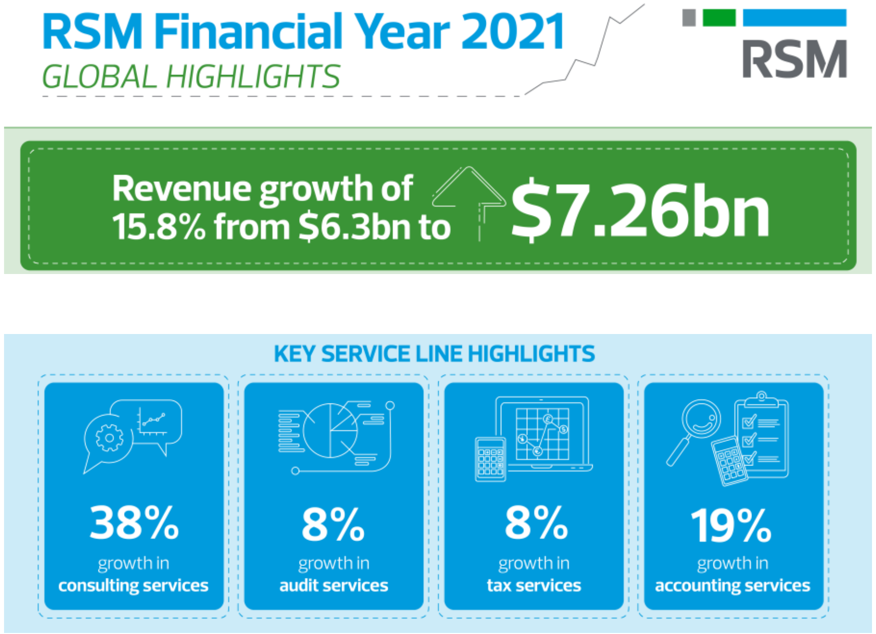
We connect the dots by:

Reading
Learning
Sharing

RSM International

A world leading provider of audit, tax and consulting services to entrepreneurial growth-focused organisations globally.





RSM

RSM Eastern Africa

4 Offices

10 Partners / Directors

204 Minds

Recognitions and Awards

ACQ5 Global Awards

KENYA - TAX ADVISORY FIRM OF THE YEAR
RSM (EASTERN AFRICA) CONSULTING LTD

Tax Advisory Firm of 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020 & 2021 in Kenya by the ACQ Finance Magazine

Accredited Certification Body

Deutsches Institut für kleine und mittlere Unternehmen e.V.

Certified Entrepreneur to German Standards

APPROVED ACCA EMPLOYER

Professional Development

APPROVED ACCA EMPLOYER

Trainee Development - Platinum

InterContinental FINANCE & LAW
2018
COUNTRY AWARDS
Tax Advisory & Auditing Firm of the Year
Africa
RSM

Tax and Auditing Firm of 2012, 2013, 2014, 2016, 2017 & 2018 by the InterContinental Finance & Law Magazine

Our Services

AUDIT & ASSURANCE

- Statutory audits including listed companies
- International Financial Reporting Standards (IFRS) guidance
- Audits and reviews of donor-funded projects

TAX SERVICES

- Corporate and personal tax compliance and consulting
- Corporate restructuring
- Health checks
- International tax and transfer pricing
- Tax policy advisory
- Managing revenue authority and tax dispute resolutions

MANAGEMENT CONSULTING

- Corporate strategy
- Governance
- Business reviews
- Family businesses and succession planning
- Documenting policies and procedures
- Review of management information systems
- Design and implementation of accounting systems
- Preparation of accounting manuals

RISK ADVISORY

- Internal audits
- Investigation and forensic accounting services
- Information technology and systems audits

OUTSOURCING

- Bookkeeping
- Management accounts
- Payroll services
- Grant management
- Budgeting and cash flow forecasting

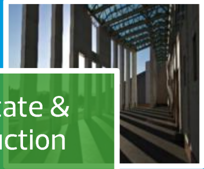
TRANSACTION ADVISORY

- Mergers and acquisitions
- Due diligence
- Valuations
- Transaction support and legal contract reviews
- Litigation support
- Corporate restructuring and turnaround

RSM

KEY INDUSTRY EXPERIENCE

Manufacturing – retail/consumer products



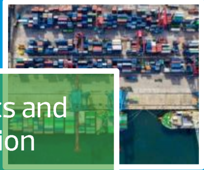
Real estate & construction

Non-governmental organisations

Trading

Hospitality

Horticulture & floriculture

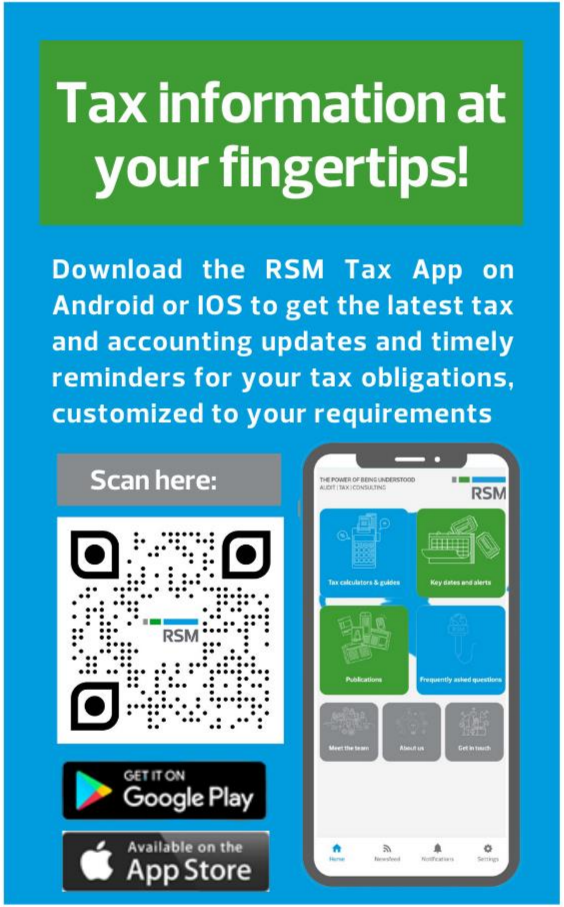


Logistics and aviation

Health & education

Service industries

RSM



- RSM Tax app download link– http://bit.ly/rsm_ea
- Android phone users can use the link – http://bit.ly/RSMtaxapp

CONNECT WITH US

NAIROBI

Tel: +254 20 3614000/4451747/8/9
Mobile: +254 706 347950/772 786111
Email: info@ke.rsm-ea.com
Website: www.rsm.global/kenya

MOMBASA

Tel: +254 41 2311778/2312640
Mobile: +254 707 613329
Email: infomsa@ke.rsm-ea.com
Website: www.rsm.global/kenya

DAR ES SALAAM

Tel: +255 22 2137314/15
Email: info@tz.rsm-ea.com
Website: www.rsm.global/tanzania

KAMPALA

Tel: +256 414 342780
Email: info@ug.rsm-ea.com
Website: www.rsm.global/uganda

LinkedIn
Company: RSM Eastern Africa

Instagram
@RSMEastAfrica

Facebook
/RSMEasternAfrica

YouTube
RSM Eastern Africa

RSM

THANK YOU

RSM