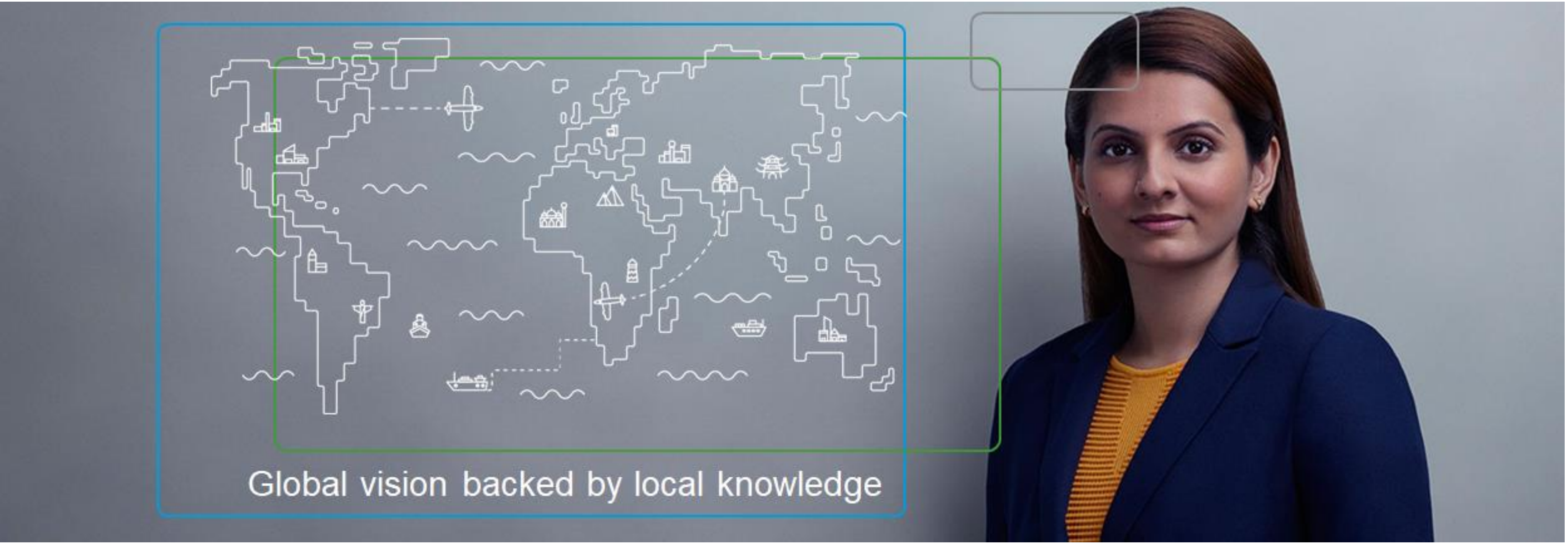

HCK/RSM BUDGET WEBINAR 2021 – OVERVIEW OF THE FINANCE BILL, 2021 AND CURRENT TRENDS IN TAXATION

Webinar starts at 6.35p.m

Thursday 17th June 2021

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING

Hindu Council Of Kenya

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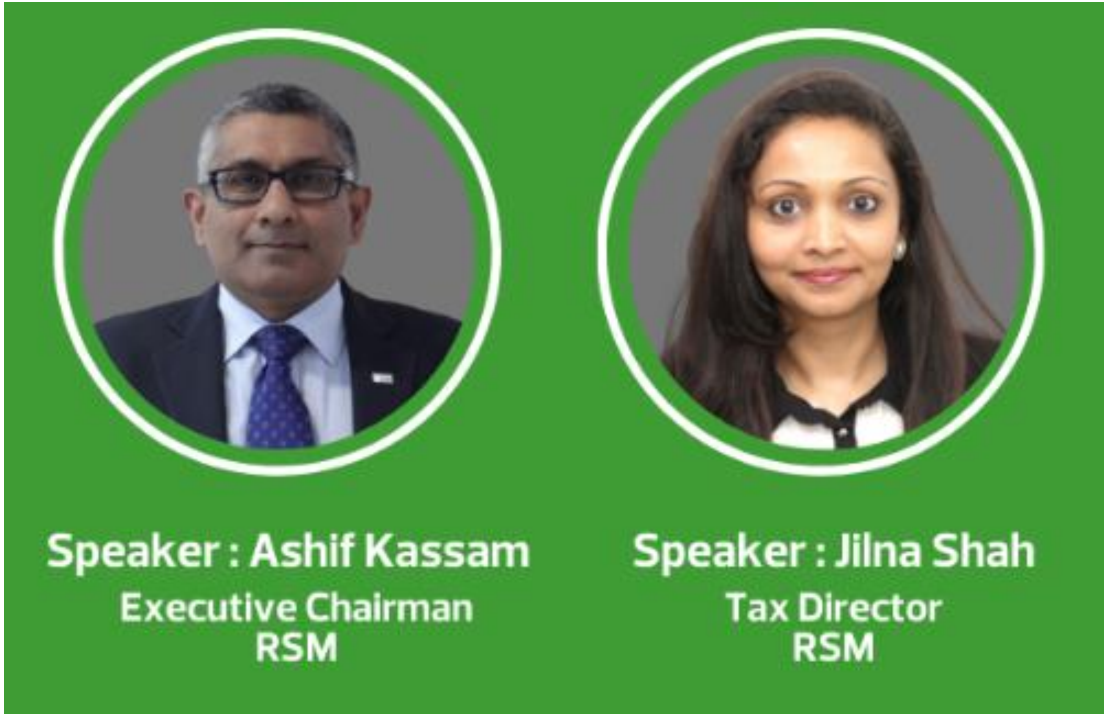
INTRODUCTION



INCOME TAX

Presented by Jilna Shah

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CONTROL DEFINITION – EFFECTIVE 1ST JULY 2021

Control in relation to a person to now include:

- Holding 20% voting rights, directly or indirectly;
- Advancing loans which comprise least 70% of the book value of the total assets, excluding a loan from a non-associated financial institution;
- A guarantee for any form of indebtedness constituting at least 70% of the total indebtedness, excluding a guarantee from a non-associated financial institution;
- The power to appoint more than half of the board, or at least one director or executive member of the governing board;
- Having exclusive rights over the know-how on which the entity is wholly dependent for the manufacture of goods or business carried;
- The person or another designated person supplies at least 90% of the purchases; or in the opinion of the Commissioner, influences the price or other conditions relating to the supply;
- The person or another designated person purchases 90% of the sales; or in the opinion of the Commissioner, influences the price or any other conditions of sales; and
- Any other relationship, dealing or practice that the Commissioner may deem to constitute control.

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DEFINITION OF PERMANENT ESTABLISHMENT EXTENDED (EFFECTIVE 1ST JULY 2021)

A fixed place of business through which business is wholly or partly carried on and includes:

- A place of management, a branch, an office, a factory, a workshop and a sales outlet;
- A mine, an oil or gas well, a quarry, or any other place of extraction or exploitation of natural resources;
- A warehouse in relation to a person whose business is providing storage facilities to others; or
- A farm, plantation or other place where agricultural, forestry plantation or related activities are carried out;

A building site, construction, assembly or installation project, or any supervisory activity connected to a site or project if it continues for a period of more than 183 days, provided that:

- Where a person carries on activities at a place and these activities are carried on during one or more periods of time that, in the aggregate, exceed 30 days but do not exceed 183 days; and
- Connected activities are carried out during different periods of time, each exceeding 30 days, by one or more enterprises closely related to the first-mentioned enterprise;

  the different periods of time shall be added to the aggregate period of time during which the enterprise has carried on the activities;

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DEFINITION OF PERMANENT ESTABLISHMENT EXTENDED (EFFECTIVE 1ST JULY 2021)

The provision of services including consultancy services provided by a person through employees or other personnel engaged for that purposes if the period exceeds the aggregate 91 days in any 12-month period commencing or ending the year of income concerned;

An installation or structure used in the exploration of natural resources provided the exploration continues for a period equal to 91 days or more; or

A dependent agent of a person who habitually concludes contracts or plays the principal role leading to the conclusion of contracts without material modification by the person, excluding the activities that are of a preparatory or auxiliary character such as:

- The use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- The maintenance of stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display, for the purpose of processing by another enterprise; or
- The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or collecting information for the enterprise, for the purpose of carrying on any other activity or combination of activities.

DIGITAL MARKETPLACE – 1st JULY 2021

- Taxing section – "income accruing from a business carried out over the internet or an electronic network, including through a digital marketplace"
- Digital marketplace – "an online platform which enables users to sell or provide services, goods or other property to other users"
- Only non-resident persons will be subject to digital service tax ("DST")
- If the non-residents' income is subject to withholding tax or where the non-resident person is in the business of transmitting messages via radio, cable, optical fiber, television broadcasting, internet, satellite or VSAT, the provisions of DST shall not apply
- Due date moved from the time of supply to 20th of the month following the end of the month when the digital service was offered
- TPA allows the Commissioner to seek the intervention of relevant authorities in the collection of tax where a person provides services over the internet or through the digital marketplace and has not fulfilled their tax obligations
- TPA amended to require a PIN for persons selling goods and services over a digital marketplace

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THIN CAPITALISATION PROVISIONS MORE RESTRICTIVE (EFFECTIVE 1ST JAN 2022)

Restriction on total interest claimable in a year restricted to 30% of earnings before interest, taxes, depreciation and amortization ("EBITDA")

Exempt income to be excluded in the calculation of EBITDA

The interest restriction will apply to:

- interest on all loans;
- payments that are economically equivalent to interest; and
- expenses incurred in connection with raising of finance.

Payment of deemed interest on interest-free loans by entities controlled by a non-resident alone or together with not more than four other persons (excluding a licensed bank or a financial institution) still applies

Clarification that loans advanced to the company by a non-resident associate of the non-resident company controlling the resident company has been deleted

The exemption granted from this provision for a company implementing a project under the affordable housing scheme upon the recommendation of the CS responsible for housing removed

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SUBMISSION OF GROUP RETURNS (EFFECTIVE 1ST JAN 2022)

Multinational Enterprise Group ("MEG") – "a group that includes two or more enterprises which are resident in different jurisdictions including an enterprise that carries on business through a permanent establishment or through any other entity in another jurisdiction"

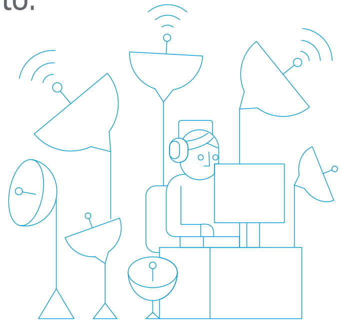
Ultimate Parent Entity ("UPE") – "an entity that is a resident in Kenya for tax purposes; is not controlled by another entity; and owns or controls a multinational enterprise group"

An UPE of a MEG required to submit to the Commissioner a return describing the group's financial activities in Kenya, where its gross turnover exceeds the prescribed threshold, and in all other jurisdictions where the group has taxable presence, not later than 12 months after the last day of the reporting financial year of the group

No clarity on the prescribed gross turnover threshold

Information required in relation to each jurisdiction to consist of the group's aggregate 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.



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CAPITAL DEDUCTIONS (EFFECTIVE 1ST JAN 2022)

Claim of depreciation on the residue moved from reducing balance to straight line

Definition of manufacturing allows claim of investment deduction on generation of electrical energy and transformation and distribution irrespective of the fact that the distribution is done through the National Grid or not

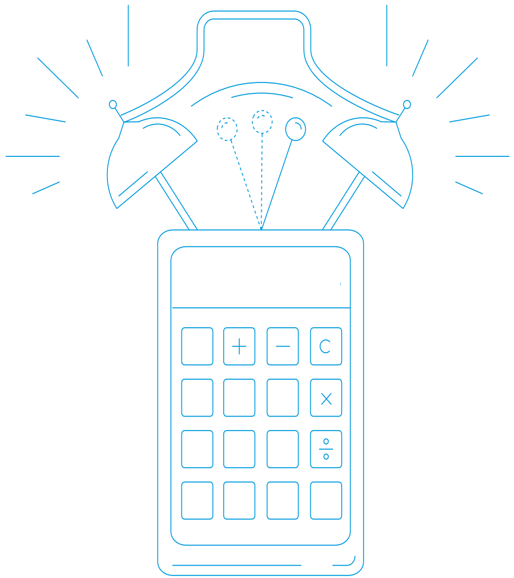
Re-introduction of the definition of "civil works" captured under the terms *building used for manufacture* and *commercial building* to include:

- roads and parking areas;
- railway lines and related structure;
- water, industrial effluent and sewerage works;
- communications and electrical posts and pylons and other electrical supply works; and
- security walls and fencing.

OTHER INCOME TAX CHANGES

- The provision restricting the carry forward of losses beyond the nine-year period has been removed – 1st July 2021

- Relief on payments "NHIF" – equivalent to 15% of the amounts paid toward NHIF and other insurance premiums, not exceeding KShs. 60,000 per annum – 1st Jan 2022



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TAX PROCEDURES ACT

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INTERNATIONAL TAX AGREEMENTS (EFFECTIVE 1ST JULY 2021)

- Validity to multilateral agreements and treaties that have been entered into by or on behalf of the Government of Kenya relating to international tax compliance and prevention of evasion of tax or exchange of information on tax matters to take effect in the manner stipulated in such agreements or treaties
- Information obtained pursuant to agreements shall not be disclosed except in accordance with the conditions specified in the agreements
- Stepping stone into Kenya entering into the common reporting standards regime pursuant to the signing and depositing the required instruments under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention)
- Kenya signed the Multilateral Convention on 8th February 2016 – and deposited the instrument of ratification, acceptance or approval on 22nd July 2020

COMMON REPORTING STANDARDS PROVISIONS (EFFECTIVE 1ST JULY 2021)

Due diligence procedures and record keeping requirements as set out in the common reporting standards ("CRS") regulation to be developed by the CS Treasury

Applicable to:

- Any financial institution that is resident in Kenya (excluding any branch located outside Kenya); or
- A branch of a foreign financial institution located in Kenya.

The reporting requirements under CRS include furnishing the Commissioner with all reportable accounts held, managed or administered by the reporting institution; or nil accounts if no account is held by a date to be set out under the regulations

The penalty for non-compliance with the CRS obligations are as follows:

- Making a false statement or omission of any information required – KShs. 100,000 for each false statement or omission, an imprisonment for a term not exceeding 3 years or both (unless reasonable effort was made to obtain information);
- Failure to file an information return or nil return by a financial institution – KShs. 1 million for each failure;
- Failure to comply with a duty or obligation, where no other penalty is prescribed – penalty of KShs. 20,000; and KShs. 20,000 per day for each day of non-compliance, however not exceeding 60 days.

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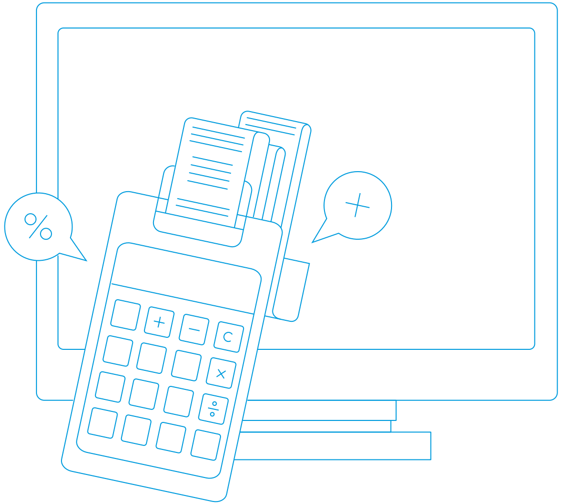
VOLUNTARY TAX DISCLOSURE PROGRAMME (EFFECTIVE 1ST JANUARY 2021)

- 3 years effective 1st January 2021
- Disclose tax liability for the purpose of being granted relief on penalties and interest
- Application to be made in the prescribed form with respect to tax liabilities accrued within a period of 5 years prior to 1st July 2020 (i.e. 1st July 2015 to 30th June 2020)
- No prosecution in respect to the tax liability disclosed, and:
  - full remission of interest and penalties if the principal tax is paid in the first year;
  - 50% remission of interest and penalties if the principal tax is paid in the second year; and
  - 25% remission of interest and penalties if the principal tax is paid in the third year



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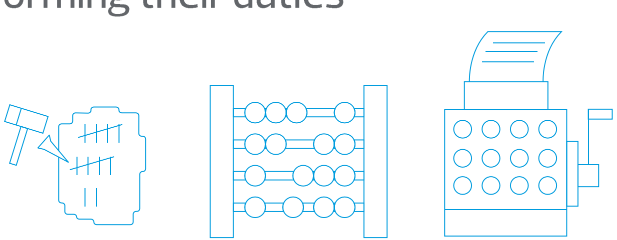
VOLUNTARY TAX DISCLOSURE PROGRAMME (EFFECTIVE 1ST JANUARY 2021)

- The application shall be voluntary and all material facts are disclosed
- An application shall not result in the payment of a refund
- Deduced into an agreement setting out the terms of the payment and the period, which shall not exceed 1 year from the date of the agreement
- Failure to meet terms of the agreement – full interest and penalties remitted become due
- No right of appeal with respect to taxes, penalties and interest remitted
- Failure to disclose material facts before expiry of agreement – relief granted withdrawn, assessment and collection of any balance of tax liability, or commencement of prosecution. Right of appeal provided
- Not applicable to a taxpayer who is under an audit or investigation, or is a party to any ongoing litigation or has been notified of a pending audit or investigation
- Disclosure shall be confidential

TPA – OTHER CHANGES

- Time period to issue an assessment increased from 5 to 7 years
- Removal of withholding VAT exemptions
- Cushioning taxpayers from being charged interest and/or penalties on any outstanding tax liabilities that can be offset with an approved tax refund amount – from the date of notification after the refund has been ascertained
- Where any matter under a tax law is a matter of interest in any ongoing criminal or civil case, this shall not be grounds for any stay, prohibition or delay of either the criminal or civil case
- Protection of officers from being personally liable for any act or omission done or committed in good faith while performing their duties



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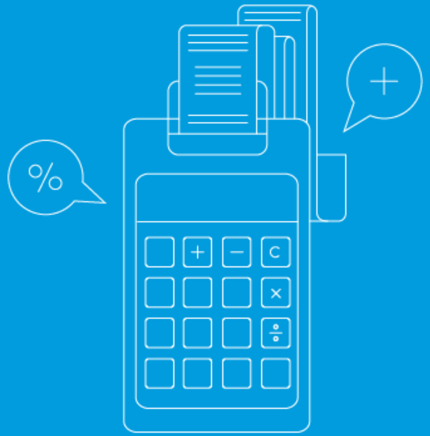

INDIRECT TAXES

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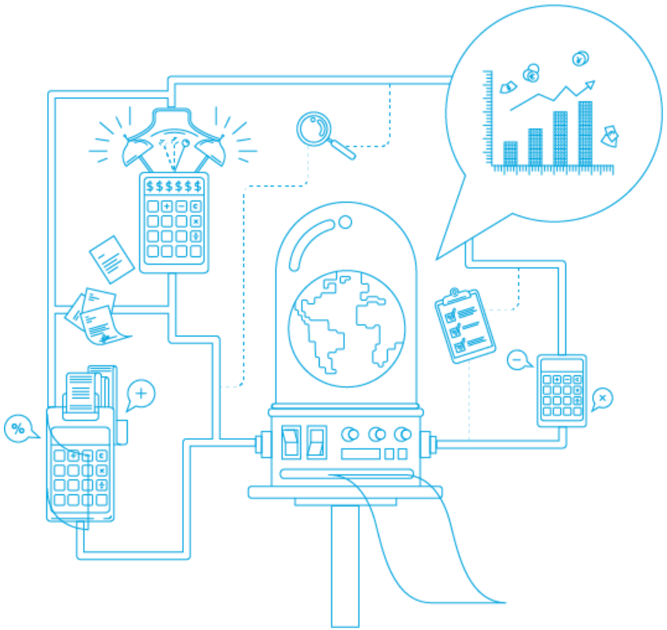
VALUE ADDED ACT, 2013



- There are a myriad of changes proposed in the Bill
- All the proposed changes shall take effect from 1st July 2021

IMPORTED SERVICES CHANGES

DEFINITION OF IMPORTED SERVICES

Proposal to amend the definition of the term **supply of imported services** as follows:

- ~~*"(c) the registered person would not have been entitled to a credit for the full amount of input tax payable if the services had been acquired by the person in a taxable supply;"*~~
- *"(c) in the case of a registered person, the person would not have been entitled to a full amount of input tax payable if the services had been acquired by that person in a taxable supply".*
- This means where a supply is made to any person who would not be entitled to claim the full amount of reverse VAT paid as input tax, the VAT on the imported supply has to be accounted for by the person importing the service

TREATMENT OF IMPORTED SERVICES

- The VAT Act 2013 in relation to the treatment of imported services has been amended to state that any person in Kenya, registered or not, on importing a taxable service, shall be deemed to make a taxable supply to himself
- A person who is not able to claim the full credit for any tax paid on imported supply on input tax shall have to pay the required VAT at the time of supply in proportion to the amount that would not be eligible to input tax

DIGITAL SERVICE TAX CHANGES

Increase of scope of taxation of digital services

The supplies chargeable to VAT will now be expanded to include supplies made over the internet or an electronic network, in addition to the supplies made through a digital marketplace

Expansion of the definition of a digital marketplace

The Bill now proposes to amend 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**, rather than the existing definition which defines a digital marketplace merely as a platform that allows direct interaction between buyers and sellers

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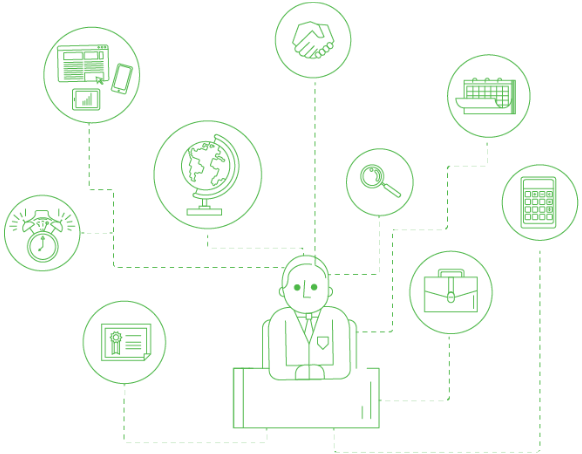
INPUT VAT DEDUCTION ON LEASING AND HIRING OF PASSENGER CARS AND MINIBUSES



- Input VAT on leasing or hiring costs on passenger cars or minibuses is now not claimable as input VAT unless these costs are incurred exclusively for making taxable supplies of that automobile in the ordinary course of a continuous and regular business of selling or dealing in or hiring of passenger cars or mini buses

The amended section will now read as:

- *"A registered person shall not deduct input tax under this Act if the tax relates to the acquisition, leasing or hiring of...."*
- This change confirms that prior to this amendment, the lease and hire costs were actually claimable as input VAT

TAX DUE BY BOTH REGISTERED AND UNREGISTERED PERSONS

- In line with the changes above, the proposal seeks to ensure that both registered and unregistered persons can have a tax obligation and allows the person to defer the payment of tax to a date not later than the 20th day of the month succeeding the date when the tax became due
- The amended section now reads as: "*Notwithstanding the provision of subsection (1), a ~~registered~~ person may defer payment of tax due to a date not later than the twentieth day of the month succeeding that in which the tax became due*"

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AMENDMENTS TO VARIOUS SECTIONS OF THE VAT ACT, 2013

Supplies	New Rate	Old Rate
The exportation of taxable services	Exempt	0%
The transfer of assets and other transactions related to the transfer of assets into real estate investment trusts and asset-backed securities (this was previously exempt and subsequently made vatable by the Tax Laws (Amendment) Act, 2020)	Exempt	16%

- The movement of the above supplies to an exempt status will affect the deductibility of input VAT for persons who mainly export taxable services
- It is our considered view that this amendment is off the back of continuous disputes between taxpayers and the Kenya Revenue Authority on the issue of where final consumption lies with respect to the provision of taxable services as this amendment will ensure there are no refunds due from the KRA if determined that consumption is deemed to be in a foreign jurisdiction

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EXCISE DUTY ACT

AMENDMENTS TO PART I OF THE FIRST SCHEDULE

- Sugar confectionary of tariff heading 17.04 attracts an excise duty of KShs. 20 per kg. **Previously, excise duty was only payable on imported sugar confectionary**
- White chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00 and 1806.90.00 to attract excise duty of KShs. 200 per kg. **Previously, excise duty was only payable on importation**
- Excise duty of 25% on imported glass bottles (excluding imported glass bottles for packaging of pharmaceutical products) has been removed, meaning glass bottles can now be imported without attracting any excise duty
- Motor cycles of tariff 87.11, other than motor cycle, ambulances and locally assembled motor cycles will now attract excise duty at the rate of 15% of the excisable value instead of a flat rate of KShs. 11,608.23 per unit
- Jewellery of tariff heading 7113 and imported jewellery of tariff heading 7117 to attract an excise duty of 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 to attract an excise duty of KShs. 5,000 per kg
- Excise duty of 20% re-introduced on betting on the amount wagered or staked. **This was introduced in the Finance Act, 2019, but deleted in the Finance Act, 2020**
- In addition to interest on loans, fees or commissions earned in respect to the loans shall now not attract excise duty

OTHER INDIRECT TAXES

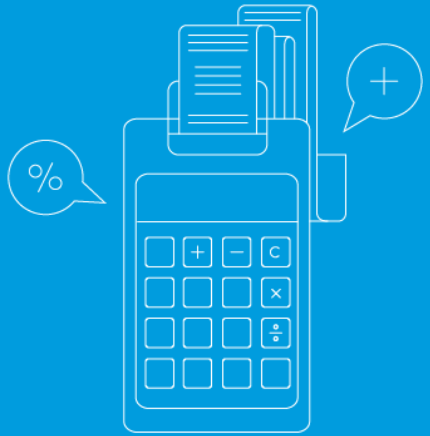
MISCELLANEOUS FEES & LEVIES ACT, 2016

Goods exempt from import declaration fee (Effective 1st July 2021)

- The Bill proposes to empower the Cabinet Secretary to exempt goods from IDF, where such goods are deemed to be of public interest or meant to promote investment and are not less than KShs. 5 billion. **This was first introduced by MLA 2017 and had a minimum investment of KShs. 200 million but was later deleted in the Finance Act, 2020**

Goods exempt from railway development levy (Effective 1st July 2021)

- The Bill seeks to make a further amendment to the Second Schedule by including under Part B item (x) which seeks to empower the Cabinet Secretary to exempt goods from RDL where such goods are in the public interest or are meant to promote investments not less than KShs. 5 billion. **This was first introduced by MLA 2017 and had a minimum investment of KShs. 200 million but was later deleted in the Finance Act, 2020**



MISCELLANEOUS AMENDMENTS

Presented by Jilna Shah

KENYA REVENUE AUTHORITY ACT

AMENDMENT OF SECTION 5A - REWARD FOR INFORMATION LEADING TO IDENTIFICATION AND COLLECTION OF DUTIES OR TAXES (EFFECTIVE 1ST JULY 2021)

- Proposal to increase rewards for information leading to identification of unassessed taxes or duties from KShs. 100,000 to KShs. 500,000 or 1% of duties or taxes identified, whichever is lower

- Additionally, in a case of information leading to recovery of unassessed duties and taxes, the reward has been increased from KShs. 2 million to KShs. 5 million or 5% of taxes or duties so recovered, whichever is lower

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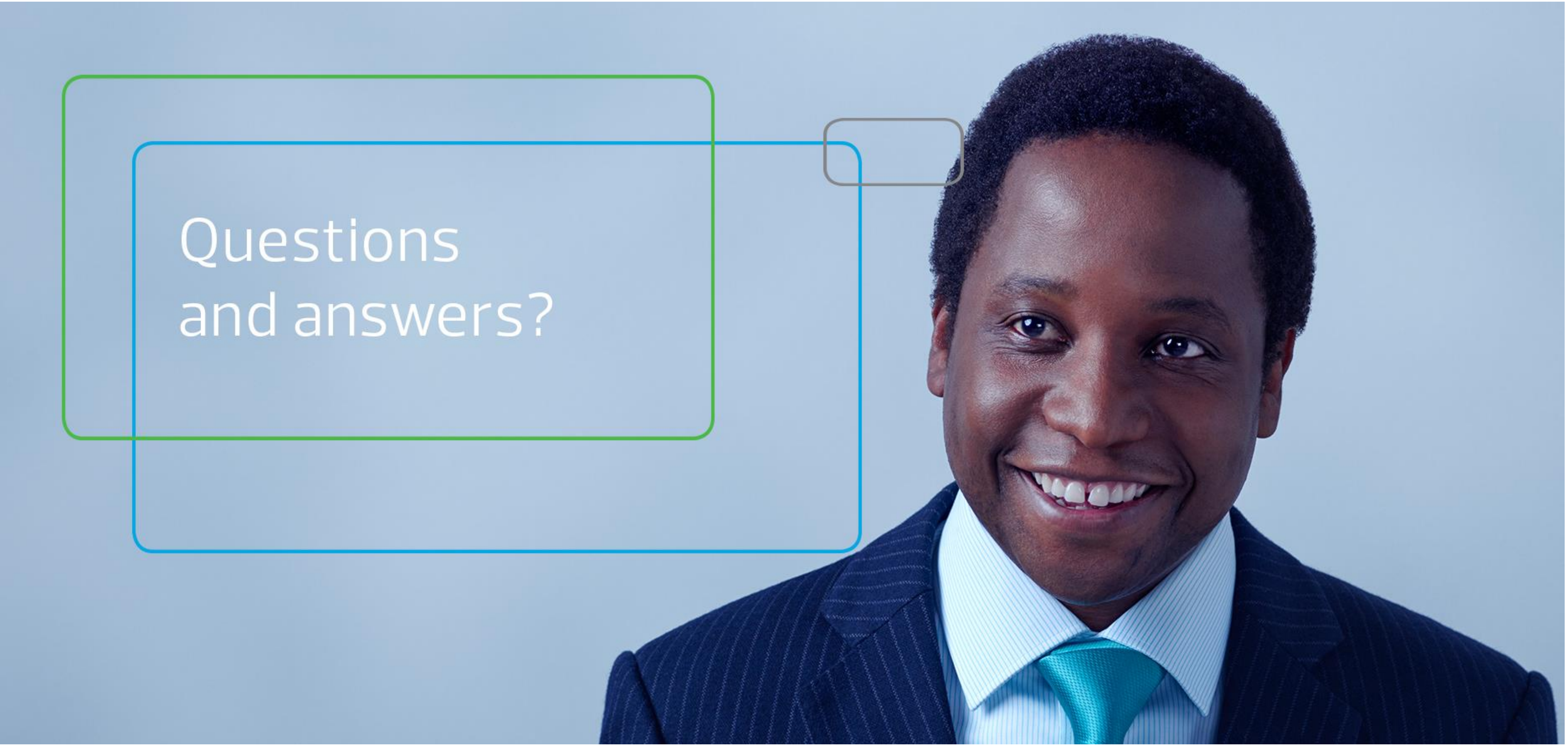
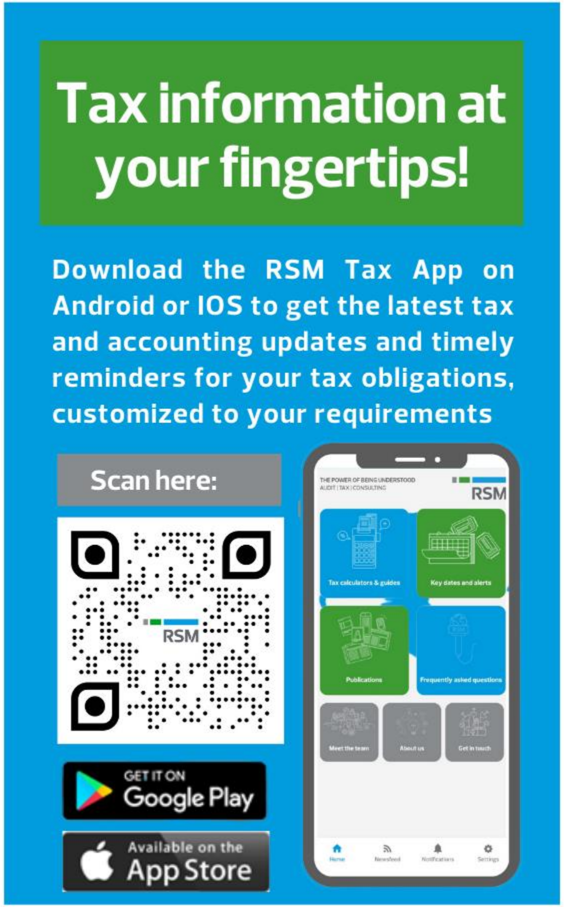

Questions
and answers?



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- **Android phone users can use the link –** http://bit.ly/RSMtaxapp

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

Core Values

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
  - in negotiations
  - in 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 develop our people

- We make RSM a better place by:
  - developing our people
  - building our brand
  - supporting our community

KNOWLEDGE – being innovative and inquisitive

- We connect the dots by:
  - reading
  - learning
  - sharing

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4
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10
PARTNERS/DIRECTORS

182
MINDS

Recognitions

InterContinental FINANCE & LAW
2018
COUNTRY AWARDS
Tax Advisory & Auditing Firm of the Year
Africa
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Tax and Auditing Firm of 2012, 2013, 2014, 2016, 2017 & 2018 in by the InterContinental Finance & Law Magazine

APPROVED EMPLOYER
ACCA
PLATINUM

DealMakers
GLOBAL AWARDS 2016
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Tax Advisory Firm of the Year - Kenya
& Tax and Auditing Firm of the Year - Kenya

Tax Advisory Firm of 2014, 2015 & 2016 in DealMakers Global Awards – Kenya
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ACQ 5 Global Awards
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FROM THE AMERICAN PEOPLE

RSM offices in Kenya and Tanzania have "Regular Status" to conduct USAID Audits and Uganda has "Conditional Status to conduct USAID Audits

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

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KEY INDUSTRY EXPERIENCE


Manufacturing – retail/consumer products

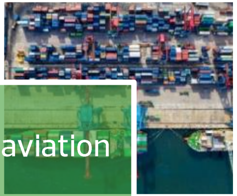

Real estate & construction


Non-governmental organisations


Trading


Hospitality


Horticulture & floriculture


Logistics & aviation


Health & education


Service industries

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