

KENYA FINANCE ACT, 2022

CONTENTS

INTRODUCTION.....	3
DIRECT TAXES.....	3
INDIRECT TAXES	9
STAMP DUTY ACT.....	16
TAX PROCEDURES ACT, 2015	16
MISCELLANEOUS AMENDMENTS.....	18

INTRODUCTION

The Finance Act ("the Act"), 2022 received Presidential assent on 21st June 2022. Most of the changes will be effective from 1st July 2022, which is the Government's fiscal year, while a few will be effective from 1st January 2023.

Most of the proposed changes in the Finance Bill, 2022 have been maintained in the Act, with a few additions. This newsletter covers changes that were maintained in the Finance Act (maintained in colour grey), new additions that were not previously included in the Finance Bill (highlighted in colour blue) and proposals in the Finance Bill that were not passed as law by the Finance Act (highlighted in colour green).

Some of the legislative highlights are as follows:

- Increase in Capital Gains Tax rate from 5% to 15%;
- Tax rate for Digital Services Tax retained at 1.5% as opposed to the proposed 3% (did not go through in the Act);
- Widening of the scope of transfer pricing and reporting requirements for multinational enterprises;
- Introduction of withholding tax on gains from financial derivatives;
- Restriction on VAT return amendments to prevent deduction of input tax that is more than 6 months; and
- Requirement for a taxpayer to deposit 50% of tax in dispute prior to appealing a ruling by the Tax Appeals Tribunal (did not go through in the Act).

DIRECT TAXES

AMENDMENTS TO VARIOUS SECTIONS OF THE INCOME TAX ACT

EXCLUSION OF CERTAIN ENTITIES FROM THIN CAPITALISATION PROVISIONS (EFFECTIVE 1ST JULY 2022)

- The Finance Act, 2021 introduced the revised thin capitalisation provisions (effective 1st January 2022) to restrict the total interest claimable in a year of income to 30% of earnings before interest, taxes, depreciation and amortization ("EBITDA"); provided in the calculation of EBITDA, any income that is exempt from tax is to be excluded. This is applicable both to locally and foreign controlled companies.
- The interest restriction applies to:
 - interest on all loans;
 - payments that are economically equivalent to interest; and
 - expenses incurred in connection with raising of finance.
- Prior to this amendment, the thin capitalisation provisions did 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 Finance Act, 2022 has excluded additional entities from the thin capitalisation provisions with the specific intention of encouraging investment in the manufacturing sector, which is in line with the country's Big Four Agenda. The following have been excluded:
 - Microfinance institutions licensed and non-deposit taking microfinance businesses under the Microfinance Act, 2006;
 - Entities licensed under the Hire Purchase Act;
 - Non-deposit taking institutions involved in lending and leasing business;
 - Companies undertaking the manufacture of human vaccines;
 - Companies engaged in manufacturing whose cumulative investment in the preceding five years from the commencement of this provision is at least 5 Billion shillings;
 - Companies engaged in manufacturing whose cumulative investment is at least 5 Billion shillings, provided that the investment shall have been made outside Nairobi City County and Mombasa County; and
 - Holding companies that are regulated under the Capital Markets Act.

DEFERRING OF FOREIGN EXCHANGE LOSSES (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 expense in computing the gains and profits of that business for the year of income in which that gain or loss was realized;
- Provided that:
 - No foreign exchange gain or loss shall be taken into account to the extent that taking that foreign exchange gain or loss into account would duplicate the amounts of gain or loss accrued in any prior year of income; and
 - 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 however will not apply to banks or financial institutions licensed under the Banking Act, [non-deposit taking microfinance businesses under the Microfinance Act, 2006](#), [entities licensed under the Hire Purchase Act](#) and [micro and small enterprises under the Micro and Small Enterprises Act, 2012](#);
- This amendment will now align the treatment for foreign exchange losses to the thin capitalisation treatment.

CHARITABLE DONATIONS (EFFECTIVE 1ST JULY 2022)

- Prior to the Finance Act, 2022, Section 15(w) of the Income Tax Act provided for deduction from taxable income any cash donations to a charitable organisation registered under or exempt under the Societies Act or the Non-Governmental Organisations Coordination Act.
- The amendment introduced by the Finance Act, 2022 now allows as a tax deductible expense, any donations to all charitable organisations which may be registered under the Companies Act, 2015, or as Trusts or under other applicable legislation where these entities are exempt from tax under Paragraph 10 of the First Schedule of the Income Tax Act or to any project approved by the Cabinet Secretary responsible for matters relating to finance.

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

- The Finance Act, 2022 has amended the Income Tax Act to provide for taxation of gains accruing to non-residents from transactions involving financial derivatives such as hedging, futures and options [excluding financial derivatives traded in the Nairobi Securities exchange](#).
- 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.
- This amendment will ensure equity and fairness.

CAPITAL GAINS TAX (EFFECTIVE 1ST JANUARY 2023)

- The Finance Act, 2022 amends Section 34(1)(j) of the Income Tax Act by increasing the tax rate on capital gains from 5% to 15%. [The Act has however provided a reprieve to firms certified by Nairobi International Financial Centre Authority who will have invested 5 Billion shillings in Kenya prior to 1st January 2023 and held the investment for at least 5 years before the transfer. The applicable rate will be the prevailing rate before 1st January 2023, which is 5%.](#)

DIGITAL SERVICES TAX ON PERSONS WITH A PERMANENT ESTABLISHMENT IN KENYA (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 remain at 1.5%.

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

- The Finance Act, 2022 has now repealed the current provision of gains or profits of business in a preferential tax regime and replaced 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.
- 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.

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

- The Finance Act, 2022 has now 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 return of the year of income 2022 and subsequent years of income and failure to comply with this will amount to an offence and be subject to the penalties as prescribed under the Tax Procedures Act, 2015.
- 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 .
- The amendment by the Finance Act, 2022 now requires multinational enterprises that have operations in Kenya to report their activities within Kenya and other jurisdictions to the Commissioner.
- 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 jurisdictions 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.
- 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 may be required by the Commissioner
- 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.

- 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,
 - d) the resident constituent entity's business and competitive environment;
 - e) the international transactions and amounts paid to the resident constituent entity or received by the entity; and
 - f) any other information that the Commissioner may require.
- 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.
- 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 of 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 has 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.

SPECIAL OPERATING FRAMEWORK (EFFECTIVE 1ST JULY 2022)

- In order to incentivise capital investment of at least 10 Billion shillings in the manufacturing of human vaccinations in Kenya, the Finance Act, 2022 has introduced a preferential tax rate special operating framework agreement. The applicable rate will be as agreed in the special operating framework agreement with the Government.

SPOUSAL INSURANCE RELIEF (EFFECTIVE 1ST JULY 2022)

- In recognition of the equity and gender equality in law, the Finance Act, 2022 has amended one of the requirements of qualifying for insurance relief to “the individual has paid a premium for an insurance made by the individual on the individual's life or the life of the individual's spouse or child”. Previously, the insurance relief only applied to individuals (husbands) who paid a premium on their life, that of their wife or child. This provision is a rewording to ensure that all taxpayers (including husbands and wives) are entitled to the insurance relief.

INVESTMENT DEDUCTIONS (EFFECTIVE 1ST JULY 2022)

- The Finance Act, 2022 introduces an amendment to the proviso where investment deduction shall be 100% where the cumulative investment value in the 3 preceding years outside Nairobi City County and Mombasa City County shall be at least 3 Billion shillings.
Provided that where the cumulative value of investment for the preceding three years of income was 2 Billion shillings on or before the 25th April 2020, and the applicable rate of investment deduction was one hundred and fifty per cent, that rate shall continue to apply for the investment made on or before the 25th April, 2020 or the investment deduction shall be one hundred and fifty per cent where the cumulative investment value for the preceding 4 years from the date of this provision comes into force or the cumulative investment for the succeeding 3 years outside of Nairobi City County or Mombasa City County is at least 2 Billion shillings.
- The Act has further extended the period for claiming investment deduction to 31st December 2023 on capital expenditure incurred on the construction of bulk storage (that can hold one metric tonnes of supplies or more) and handling facilities for supporting the Standard Gauge Railway operations.

ALIGNMENT OF PAYE PENALTIES (EFFECTIVE 1ST JULY 2022)

- The Finance Act, 2022 has deleted Section 37(3) of the ITA, which allowed the Commissioner to remit penalties amounting to not more than Kshs 500,000 in relation to PAYE from one employer in a year of income without the approval of the Minister. In doing so, the amendment has also deleted the provision requiring the Commissioner to provide quarterly reports to the CS National Treasury of all penalties remitted in that quarter.
- This amendment will ensure the administration of all the tax heads including PAYE are under the TPA.

MANUFACTURERS OF HUMAN VACCINE – INCOME EXEMPT FROM TAX (EFFECTIVE 1ST JULY 2022)

- The Finance Act, 2022 has amended the First Schedule of the ITA to exempt companies undertaking the manufacture of human vaccine from income tax as follows:
 - a) No deemed interest in respect of interest free loans issued or advanced to companies undertaking the manufacture of human vaccines;
 - b) No tax on payments made to non-resident service providers who do not have a permanent establishment in Kenya, in respect of services provided to a company undertaking the manufacture of human vaccines;
 - c) No compensating tax accruing to a company undertaking the manufacture of human vaccines;
 - d) No tax on dividends paid by a company undertaking the manufacture of human vaccines to a non-resident person;
 - e) No tax on income of a company undertaking the manufacture of human vaccines;
 - f) Dividends paid by Special Economic Zone enterprises, developers and operators licenced under the Special Economic Zones Act;
 - g) Dividends paid by Special Economic Zone enterprises, developers and operators to any non-resident person.

SPECIAL ECONOMIC ZONES (EFFECTIVE 1ST JULY 2022)

- The Finance Act, 2022 has amended the First Schedule of the ITA to exempt tax on dividends paid out by an SEZ as follows:
 - a) No tax on dividends paid by Special Economic Zone enterprises, developers and operators licenced under the Special Economic Zones Act;
 - b) No tax on dividends paid by Special Economic Zone enterprises, developers and operators to any non-resident person.

RATES OF TAX (EFFECTIVE 1ST JULY 2022)

- The Finance Act, 2022 has amended the Third Schedule of the ITA to amend the rates of tax as follows:
 - a) A resident company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority- 15% for the first ten years from the year of commencement of its operations;
 - b) A resident company operating a shipping business in Kenya -15% cent for the first ten years from the year of commencement of its operations;
 - c) For a non-resident person in respect of interest and deemed interest arising from a bearer bond issued outside Kenya of at least two years duration and interest, discount or original issue discount – 7.5% of the gross sum payable.

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.
- 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.
- 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.

- 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.

Previously, under employee share ownership plans, the taxable benefit used to be the difference between market the value and the offer price at the date the option is granted. The change is that the benefit will now be computed between the difference between offer price at the date when the option is granted and the market value when the employee exercises the option.

INDIRECT TAXES

VALUE ADDED TAX ACT

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.

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 Finance Act 2022 exempts 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 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.

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

- The Finance Act, 2022 has included in the list of documents required as support of deductibility of input VAT, the custom entry in the case of a participant in the Open Tender System for the importation of petroleum products that have been cleared through a non-bonded facility. The custom entry should detail the name and PIN of the winner of the tender and the name of the other oil marketing company participating in the tender.
- The input tax incurred by the oil marketing company participating in the Open Tender System prior to 1st July 2022 will be deductible provided that it shall be claimed within twelve months after this provision comes into force.

AMENDMENT RELATING TO APPLICATION OF VAT REFUNDS (EFFECTIVE 1ST JULY 2022)

- The Finance Act, 2022 has expanded the scope of VAT refunds to include any VAT credits arising from input tax incurred by a manufacturer in respect to taxable supplies made to an official aid funded project approved by the Cabinet Secretary in accordance with the First Schedule to the VAT Act, 2013.
- If such VAT credits arose from Input VAT incurred before 1st July 2022, the taxpayer will be required to apply for a refund within 12 months.

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 Finance Act, 2022 imposes 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 5 years 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.

EXEMPTION ON TAXABLE SUPPLIES TO SPECIALIZED HOSPITALS (EFFECTIVE 1ST JULY 2022)

- Prior to the new amendment, taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for Health, was exempt from VAT.
- These supplies will now be subject to VAT at 16%. However, the supplies to constructors who had obtained an approval before 1st July 2022 will continue as exempt until the supply of the goods is made in full.

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
Supply of liquefied petroleum gas including propane	8%	16%
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%
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 ex-factory value comprises at least thirty per cent of parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya For this purpose, "local content" means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya	Exempt	16%
145. Taxable goods, inputs and raw materials imported or locally purchased by a company which is– (a) engaged in business under a special operating framework arrangement with the Government; and (b) incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least 10 Billion shillings, subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health.	Exempt	16%
146. Such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector: Provided that the value of such investment is not less than 2 Billion shillings	Exempt	16%

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%
The exportation of taxable services	16%	Exempt
The exportation of taxable services in respect of business process outsourcing	0%	Exempt
Fertilisers of Chapter 31	0%	Exempt
Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for Health who may issue guidelines for determining eligibility for the exemption	16%	Exempt
66A.Bioethanol vapour (BEV) stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel)	Exempt	16%
34. Taxable goods, inputs and raw materials imported or locally purchased by a company which– (a) is engaged in business under a special operating framework arrangement with the Government; and (b) is incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least 10 Billion shillings, subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for Health.	Exempt	16%
25. Inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved from time to time by the Cabinet Secretary responsible for Agriculture	0%	16%

EXCISE DUTY ACT

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

- The Finance Act, 2022 has amended Section 10 of the Excise Duty Act, 2015 to empower the Commissioner to exempt from this inflation adjustment requirement, certain products depending on the prevailing economic circumstances facing them.
- Prior to this change, Section 10 of the Excise duty Act, 2015 as amended by the Finance Act 2020, provided that:
Despite section 8, 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 amendment is a welcome addition, as it will cushion against price increases of certain products that the Commissioner may exempt from inflationary adjustments of excise duty.

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

- The new amendment has exempted from excise duty spirits of undenatured ethyl alcohol (neutral spirit) used in manufacture of pharmaceutical products.
- Prior to this amendment, spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6% were subject to excise duty at Ksh 253 per litre.
- The amendment is a welcome move and will contribute greatly on reduction of costs incurred in the manufacture of pharmaceutical products.

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

- The Finance Act, 2022 has exempted from excise duty locally manufactured passenger motor vehicles.
- Before this amendment, motor vehicles of tariff heading 87.02, 87.03 and 87.04 excluding—
 - i. locally assembled motor vehicles;
 - ii. school buses for use by public schools;
 - iii. motor vehicles of tariff no. 8703 .24 .90 and 8703 .33 .90; and
 - iv. imported motor vehicles of cylinder capacity exceeding 1500cc. were subject to excise duty at 20%
- This move will promote investment in local assembly and manufacture of passenger motor vehicles.

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

- The new amendment by the Finance Act, 2022 will see a change to the current taxation regime specifically for liquid nicotine by charging Ksh 70 per milliliter.
- Prior to the amendment, 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 were subject to an excise duty at Ksh 1,200 per kg.
- The new amendment will see an increase in prices of liquid nicotine products.

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

- The Finance Act, 2022 has amended Section 11 of the Excise Duty Act to read as follows:
- ex-factory selling price of excisable goods shall be:
 - (a) if the excisable goods are sold by the manufacturer 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.

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

- The Finance Act, 2022 has amended Section 36(4) of the Excise Duty Act to provide that the penalties and interest applicable on late payment of excise duty on imports shall be in line with the rates provided for by the Tax Procedures Act i.e. 5% penalty and 1% interest per month.
- The amendment 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 has brought clarity on the chargeability penalties and interest on excise duty amounts due.

EXCISE DUTY ON PLASTICS (EFFECTIVE 1ST JULY 2022)

- The new amendment by the Finance Act, 2022 has introduced excise duty on plastics of tariff 3923.90.90 at 10%.
- Prior to the amendment, only carboys, bottles, flasks and similar articles classified under tariff 3923.30.00 are subject to excise duty at 10% and will now include other articles for the conveyance or packing of goods of plastics, stoppers, lids, caps and other closures of plastics.

EXCISE DUTY ON IMPORTED POTATOES, POTATO CRISPS, POTATO CHIPS AND ELECTRONIC CIGARETTES AND IMPORTED READY TO USE SIM CARDS (EFFECTIVE 1ST JULY 2022)

- The new amendment has introduced excise duty at 25% on potatoes of tariff 0710.10.00, 2004.10.00 and 2005.20.00.
- Prior to the amendment, only potatoes, fresh or chilled of tariff 07.01 were subject to excise duty at 25%
- This means that excise duty is now applicable on all imported potatoes thus increased prices.
- The Finance Act, 2022 has also changed the description to include other nicotine delivery devices and charge excise duty at 40%.
- Before the amendment, electronic cigarettes were excisable at Ksh 3,787 per unit
- The amendment will see an introduction of excise duty on nicotine delivery devices which will help in curbing the use of these products.
- [The Act has also introduced excise duty on imported ready to use sim cards at Ksh 50 per sim card.](#)

INTRODUCTION OF EXEMPTION FROM EXCISE DUTY ON BETTING ACTIVITIES RELATING TO HORSE RACING (EFFECTIVE 1ST JULY 2022)

- [The new amendment has excluded betting activities relating to horse racing from the provision of Paragraph 4A of Part II of the First Schedule to the Excise Duty Act, 2015.](#)
- [The amendment means that betting activities relating to horse racing will not be subject to excise duty at 7.5% on the amount wagered or staked.](#)

INTRODUCTION OF EXCISE DUTY ON FEES CHARGED BY DIGITAL LENDERS AND IMPORTATION OF CELLULAR PHONES (EFFECTIVE 1ST JULY 2022)

- [The Finance Act, 2022 through an amendment to the First Schedule to the Excise Duty Act, has introduced excise duty on fees charged by digital lenders and importation of cellular phones at 20% and 10% respectively.](#)
- [Prior to the change, excise duty was only applicable on other fees charged by financial institutions at twenty percent of their excisable value. Digital lenders were not covered by this scope since they do not fall within the definition of financial institutions.](#)
- [This new amendment will see an increased cost of borrowing from digital lenders as well as increased prices of cellular phones.](#)

APPLICATION OF EXCISE DUTY ON IMPORTATION OF RAW MATERIALS (EFFECTIVE 1ST JULY 2022)

- The Finance Act, 2022 has through the amendment of the First Schedule to the Excise duty Act, 2015 exempted from excise duty, specific raw materials if sourced locally.
- Prior to the amendment, Unsaturated polyester of tariff 3907.91.00, Alkyd of tariff 3907.50.00, Emulsion VAM of tariff 3905.91.00, Emulsion – styrene Acrylic of tariff 3903.20.00, Homopolymers of tariff 3905.19.00 and Emulsion B.A.M of tariff 3906.90.00 were subject to excise duty at 10%, whether locally sourced or imported.
- The Finance Act has now specified that that excise duty of 10% will only be applicable on importation of the said raw materials.

CHANGE OF EXCISE DUTY RATES (EFFECTIVE 1ST JULY 2022)

Item	New Rate	Old Rate
Electronic cigarettes – see new description below	Deleted	Excisable at Ksh 3,787 per unit
Cartridge for use in electronic cigarettes	Deleted	Excisable at Ksh 2,525 per unit
Electronic cigarettes and other nicotine delivery devices	40%	N/A
Liquid nicotine for electronic cigarettes	Ksh 70 per milliliter	N/A
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%
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
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Ksh 229 per litre	Ksh 208.20 per litre
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 15,296.6 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
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
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 1,500 2500	Ksh 1,200
Fees charged by digital lenders	20%	Exempt
Importation of cellular phones	10%	Exempt
Imported furniture of any kind used in offices, kitchen, bedroom and other furniture	Exempt	25%

STAMP DUTY ACT

EXEMPTION OF MORTGAGE RELATED INSTRUMENTS FROM STAMP DUTY (EFFECTIVE 1ST JULY 2022)

- The Finance Act, 2022 has introduced an exemption from stamp duty on instruments executed in favour of a mortgage refinance company.
- This is in line with the Housing Pillar of the Government of Kenya's Big 4 Agenda as it will lead to cheaper mortgages and consequently leading to an increased mortgage uptake.

TAX PROCEDURES ACT, 2015

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

- The Finance Act, 2022 has amended 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.

AMENDMENTS OF ASSESSMENTS (EFFECTIVE 1ST JULY 2022)

- The Finance Act, 2022 has amended Section 31(4) of the Tax Procedures Act, 2015 to add a proviso that in case of VAT, the input tax shall be allowable for a deduction within 6 months after the end of the tax period in which the supply or importation occurred to align this with the VAT Act provisions.

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

- The Finance Act, 2022 has amended Section 47 of the Tax Procedures Act, to allow taxpayers with overpaid taxes to make an application requesting the Commissioner to:
 - i. Offset the overpaid taxes against future tax liabilities; or
 - ii. Issue a cash refund of the overpaid taxes.
- Once such application has been made, the Commissioner will have up to 90 days to make a determination. [Where the Commissioner fails to ascertain and determine an application made within the 90 days, such an application will be deemed ascertained and approved.](#)
- Where a refund is due out of such an application, the Commissioner will be required to issue the cash refund within 2 years from the date of application, failure to which an interest of 1% per month will accrue on the amount due.
- The Act has also reduced the timeline for refund applications for Value Added Tax from 2 years to 6 months.
- Further, where an application to a refund has been made, the Commissioner shall apply the overpayment in the below order:
 - a) in payment of any other tax owing by the taxpayer under the specific tax law;
 - b) in payment of a tax owing by the taxpayer under any other tax law; and
 - c) any remainder shall be refunded to the taxpayer.
- Where the Commissioner has applied the overpaid tax to offset an outstanding tax liability, any outstanding tax after such application shall accrue interest and penalties.

However, with the new amendment, where a person overpays an instalment tax due under Section 12 of the Income Tax Act, the Commissioner shall apply the overpaid tax to offset the taxpayer's future instalment tax liability. This therefore means that a taxpayer cannot apply for a refund of overpaid instalment taxes.

- Any taxpayer aggrieved by the decision of the Commissioner may appeal to the Tribunal within 30 days after being notified of the decision.

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

- The Finance Act, 2022 has amended Section 47A of the Tax Procedures Act, 2015 by introducing a provision where a person may be allowed to apply for a refund of taxes paid in error.
- With the new provision, 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. This will however be subject to an approval by the Cabinet Secretary.
- 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.
- With the new provision, a person may apply credits relating to tax paid in error against other taxes due to the Revenue Authority.
- For the purposes of this section, "tax paid in error" has been defined to mean any tax paid which the Commissioner is satisfied ought not to have been paid.

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

- The Finance Act, 2022 has now empowered the Commissioner to recover unpaid taxes by issuing a notification to the Registrar in writing that the property, to the extent of the taxpayer's interest in the property, shall be the subject of a security for the unpaid tax specified in the notification.
- 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.
- Through the definition of property, the amendment broadens the assets available to the Commissioner as security for unpaid taxes. Prior to this amendment, only land and buildings were available as security.
- Further, the Act has provided that where such outstanding amounts of taxes have been settled, the Commissioner shall direct the Registrar to cancel such a notification to have the asset as security for unpaid taxes. [Where there is an agreed payment plan between a taxpayer and the Commissioner, the tax liability shall be settled within the agreed payment plan before the Commissioner's notice is lifted.](#)

OBJECTION TO TAX DECISION (EFFECTIVE 1ST JULY 2022)

The Finance Act, 2022 has made 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 consider and may allow an application and 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 prior to this amendment did 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. Before the change any request for additional information provided the Commissioner with an additional 60 days to issue an objection decision.
- A person dissatisfied with the decision of the Commissioner may appeal to the Tribunal within 30 days after being notified of the decision.

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

- The Finance Act, 2022, through the amendment of the First Schedule of the TPA has included registration of a trust within the list of transactions that a PIN will be required.
- There is however, no clarification on whether the PINs required are the trustee PINs or the PINs of the sponsors and beneficiaries.

EXTENSION OF RESPONSE TIMELINES BY AGENTS ISSUED WITH NOTICES BY THE COMMISSIONER RELATING TO RECOVERY OF TAX FROM PERSONS OWING A TAX PAYER (EFFECTIVE 1ST JULY 2022)

- The Finance Act, 2022 has extended the response timelines for agents owing monies to taxpayers from who the Commissioner may want to recover unpaid taxes. Previously, such agents were required to respond to the Commissioner's notice, setting out the reasons for inability to comply with such notices within 7 days. With the current amendment, this timeline has been extended to 14 days.
- The Act has also specified that the Commissioner can only issue such a notice if an assessment has been confirmed through an Objection Decision and the taxpayer has defaulted to appeal to the Tax Appeals Tribunal within the prescribed timelines.

WITHHOLDING VAT (EFFECTIVE 1ST JULY 2022)

- The Finance Act, 2022 through the amendment of the Section 42A of the TPA has included registered manufacturers whose value of investment in the preceding 3 years from the commencement of the TPA is at least Ksh 3 Billion.
- This means withholding tax does not need to be withheld by appointed agents on taxable value of zero rated supplies and registered manufacturers whose value of investments is Ksh 3 Billion in the preceding 3 years from the commencement of the TPA.

MISCELLANEOUS AMENDMENTS

MISCELLANEOUS FEES AND LEVIES ACT, 2016

ALIGNMENT OF MISCELLANEOUS FEES AND LEVIES PENALTIES (EFFECTIVE 1ST JULY 2022)

- The Finance Act, 2022 has amended Section 9B of the Miscellaneous Fees and Levies Act, 2016 to include unpaid levies under the purview of items chargeable to penalties and interest as per the provisions of Section 47 of the Tax Procedures Act, 2015.
- The new provision will be:
The provisions of Section 47 of the Tax Procedures Act, 2015 shall apply for the purposes of—
(b) the determination by the Commissioner of penalties and interests on fees *and levies* that remain unpaid.

CHANGES ON IMPORT DECLARATION FEE (IDF) AND RAILWAY LEVY (RDL) (EFFECTIVE 1ST JULY 2022)

- The Finance Act, 2022 has amended Section 7 and Section 8 in subsection 2A of the Miscellaneous Fees and Levies Act, 2016.
- The new amendment clarifies that import declaration fee and railway development levy will be applicable at the rate of 1.5% of the custom value of raw materials, intermediate products imported by manufacturers, upon recommendation to the Commissioner by the Cabinet Secretary responsible for the matters relating to Industry.
- A similar treatment will be accorded to input for the construction of houses under an affordable housing scheme upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to housing.
- Previously, the provision erroneously read as “upon approval by the Cabinet Secretary, on the recommendation of the Cabinet Secretary responsible for matters relating to housing.”

ADDITIONAL DUTY ON SUPPLY FROM EPZ NOT TO APPLY TO IMPORTS BY CBK (EFFECTIVE: 1ST JULY 2022)

- Section 9A of the Miscellaneous Fees and Levies Act, 2016 was amended, adding that the additional duty at a rate of 2.5% of the customs value payable in respect of goods entered for home use from an export processing zones enterprise, shall not apply to currency notes and coins imported by the Central Bank of Kenya.

INTRODUCTION OF EXPORT LEVY ON IRON ORES AND CONCENTRATES (EFFECTIVE: 1ST JULY 2022)

- The Finance Act, 2022 through the amendment of the First Schedule of the Miscellaneous Fees and Levies Act, 2016 has introduced Export Levy of USD 175 per ton on iron ores and concentrates, including roaster iron pyrites.

CHANGE OF DATE FOR INFLATION ADJUSTMENT FOR EXPORT LEVY (EFFECTIVE 1ST JULY 2022)

- Paragraph (1) of Part III of the First Schedule of the Miscellaneous Fees and Levies Act, 2016 has now been amended to change the date of inflationary adjustments on specific rates of export levy on goods specified in Part I of the Act.
- Prior to the change, inflationary adjustments were done at the beginning of every financial year. This has now been changed to a date not later than 1st October of every financial year

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

- There are new items inserted in Part A and B of the Second Schedule of the Miscellaneous Fees and Levies Act, 2016. This exempts the following items from the Import Declaration Fee (IDF) and Railway Development Levy (RDL);
 - a. Input and raw materials imported by manufacturers of pharmaceutical products on the recommendation of the Cabinet Secretary responsible for matters relating to Health.
 - b. Goods imported for the use in construction and maintenance of human vaccine manufacturing plants approved by the Cabinet Secretary for the National Treasury on recommendation by the Cabinet Secretary for Health.
 - c. Goods, inputs and raw materials imported by a company which is:
 - engaged in the business under an operating framework arrangement with the Government; and,
 - Incorporated for purposes of manufacturing of human vaccines and whose capital investment is less than 10 Billion shillings.subject to an approval of the Cabinet Secretary for the National Treasury on recommendation by the Cabinet Secretary for Health.
- Previously, these items were subjected to IDF and RDL at rates of 3.5% and 2% respectively.
- This amendment is aimed at promoting manufacturing of pharmaceutical products in order to improve access to affordable health care services.

EVIDENCE ACT

DEFINITION OF A REVENUE OFFICER (EFFECTIVE 1ST JULY 2022)

- The definition of a “revenue officer” under the Evidence Act, has now been changed in subsection (1) to read “No judge, magistrate or police officer shall be compelled to say when he got any information as to the commission of any offence, and no revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the law relating to the public revenue or ~~to income tax, customs or excise~~ the laws specified in the First Schedule to the Kenya Revenue Authority Act, 1995”; and
- In subsection (ii) to read “For the purposes of this section, “revenue officer” means any officer employed in or about the business of any branch of the public revenue, including any branch of the income tax, customs or excise departments.”

CAPITAL MARKETS AUTHORITY ACT

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

- The Finance Act, 2022 has made an amendment to definition of an investment advisor by deleting Paragraph (3) of Section 2 of the Capital Markets Act. With the new amendment, an investment advisor will now not include a person or body pursuant to a contract or arrangement with a client on undertakings on their behalf.
- The amendment will expand the spectrum of persons who can act as investment advisors to include single director companies and partnerships to be licensed as investment advisors.
- Previously, there was 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.

LICENSING REQUIREMENTS (EFFECTIVE 1ST JULY, 2022)

- The Finance Act, 2022 has made an amendment to licensing requirements as previously, the applicant was a company incorporated under the Companies Act with such minimum share capital, and replacing it with the applicant being such legal entity as may be prescribed in the Regulations.
- The Act also seeks to amend the previous requirement where at least one director and at least one employee who is the chief executive of the applicant company have satisfied such minimum qualification requirements as may be prescribed. This has now been amended to the director, chief executive officer or such other person who directs, conducts, manages or supervises the business of the applicant has satisfied the minimum qualification requirements as may be prescribed. There is no requirement for a minimum of one director or one employee who is chief executive as either with such qualifications can now qualify.

KENYA ROADS BOARD ACT, 1999

CHANGES TO KENYA ROADS BOARD ACTIVITIES (EFFECTIVE 1ST JULY 2022)

- The Finance Act, 2022 has amended Section 6 paragraph 2(c), to provide that the board shall manage funds and allocate monies from the Fund: 50% of the Fund allocated equitably to district road committees and to all constituencies in the country. The other 50% of the funds, if in exceptional circumstances, the Ministry of Finance may, with approval of the Parliament, make advances to the board and such advances shall be made on such terms and conditions of repayment or otherwise.
- Previously, the board was responsible to administer the funds derived from the fuel levy and any other funds that may have accrued to it.

BETTING, LOTTERIES AND GAMING ACT

BETTING TAX NOT APPLICABLE TO HORSE RACING (EFFECTIVE 1ST JULY 2022)

- The amendment of Section 29A, where betting tax will not be applicable to horse racing.

ROAD MAINTENANCE LEVY FUND ACT

ROAD MAINTENANCE LEVY TO FUND THE CONSTRUCTION OF ROADS (EFFECTIVE 1ST JULY 2022)

- With the new amendment of Section 3(2) of the Road Maintenance Levy Fund Act, out of the levy collected from road maintenance, an amount of Ksh 3 per litre of petroleum sold must be paid to the Road Annuity Fund which will fund the construction of roads under the Road Annuity programme and similar roads approved by the National Assembly.

UNCLAIMED FINANCIAL ASSETS ACT

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

- The Finance Act, 2022 through the introduction of a new Section 33A, has introduced waiver of penalties, fines with the approval of the Cabinet Secretary whether in part or in full, where—
 - (a) the waiver is intended to facilitate the holder of the asset to disclose and deliver the undeclared asset to the Authority;
 - (b) in the opinion of the Authority, there is justifiable reasons to do so; or
 - (c) it is in the public interest to do so.
- Further, the Act has established a Programme, to be known as the Voluntary Unclaimed Financial Assets Disclosure programme which shall be for a period of 12 months from 1st July 2022. The object and purpose of the programme shall be to grant relief of the penalties and interest in unclaimed assets where the holder discloses, reports or delivers the assets to the Authority. The programme shall apply to assets held up to 13th June 2022. A holder who discloses, reports and delivers the unclaimed financial assets within 12 months from 1st July 2022 shall not be liable to the penalties and interest payable.

STATUTORY INSTRUMENTS ACT

AUTOMATIC REVOCATION OF STATUTORY INSTRUMENTS (EFFECTIVE 25TH JANUARY 2023)

- The Finance Act, 2022 has amended the Statutory Instruments Act to extend tax related regulations under various tax laws from automatic expiry by 24 months.
- The Act, prior to the change, provided 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.

STATUTORY INSTRUMENTS RELATING TO TAXES, LEVIES OR FEES (EFFECTIVE 1ST JULY 2022)

The Finance Act, 2022 further amended the Statutory Instruments Act under Section 15, to provide that for any statutory instrument which contains provision dealing with tax related regulations or public funds, the National Assembly shall consider the notice and make a resolution either to approve or reject the notice within 28 sitting days after laying of statutory instruments before Parliament.

ITEMS PREVIOUSLY IN THE FINANCE BILL BUT DID NOT GET ASSENT IN THE FINANCE ACT

- Change of digital services tax from 1.5% to 3%.
- Requirement for a taxpayer to deposit 50% of tax in dispute prior to appealing a ruling by the Tax Appeals Tribunal.
- Change of excise duty rate on 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 from Kshs 2,500 to Kshs 1,500.
- Change of Excise duty rate on Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices from Ksh 6.03 per litre to Ksh 6.60 per litre.
- Introduction of excise duty on all glass bottles (excluding glass bottles for packaging of pharmaceutical products) at 25%.
- Increase of excise duty rate on betting, gaming, price competition and lottery (excluding charitable lotteries) from 7.5% to 20%.
- Exemption of fertilized eggs of tariff numbers 0407.11 and 0407.19 eggs for hatching imported by licensed hatcheries upon approval by the responsible CS from excise duty.

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