



Tax Implications of the 2021/22 Budget

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Presentation outline



- ☐ Budget Making Process
- ☐ Finance Bill 2021

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Finance Bill 2021



- The Finance Bill, 2021 (the Bill) was published on 30 April 2021. The Bill proposes to amend the following Laws:
 - ✓ Income Tax Act (ITA),
 - ✓ Value Added Tax (VAT) Act,
 - ✓ Excise Duty Act,
 - ✓ Tax Procedures Act (TPA),
 - ✓ the Miscellaneous Fees and Levies Act, 2016,
 - ✓ Capital Markets Act, Insurance Act, Kenya Revenue Act,
 - ✓ Retirement Benefits Act and
 - ✓ Central Depositories Act.

Finance Bill 2021 Cont'd



- Few new taxes were introduced unlike the year 2020
- While no new income taxes have been introduced, an excise tax has been proposed in respect of the Betting industry.
- Similar to previous years, the trend of reducing the scope of goods and services that are zero rated and VAT exempt continues in this Bill.
- This year has also seen some focus around tax procedures which are primarily geared towards increasing the scope of authority of the KRA and providing more powers to the Commissioner

Income Tax



❖ Definition of “control”

- The Bill proposes to introduce an expanded definition of ‘control’ under Section 2 of the Income Tax Act.
- directly or indirectly, holds at least 20% of the voting rights in a company;
- Loans constitute at least 70% of the book value of the total assets
- Guarantees of t least 70% of total indebttness
- authority and mandate to appoint more than half of the board of directors
- owner or has the exclusive rights over the know-how, patent, copyright, trademark, licence, franchise or any other business or commercial right of a similar nature that
- wholly dependant on for the manufacture or processing of goods or articles or business carried on by the other person;
- Sales and purchases of at least 90% from one person

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Income Tax cont'd



❖ Definition of “infrastructure bond”

- The Bill defined “infrastructure bond” to mean a bond issued by the Government for the financing of a strategic public infrastructure facility including a road, hospital, port, sporting facility, water and sewerage system, or a communication network;

❖ Definition of “Permanent Establishment”

- A fixed place of business through which a business is carried on;
- A building site, construction, assembly or installation project or any supervisory activity, provided that the same continues for more than 183 days;
- Provision of services including consultancy services through employees or other personnel where those services continue for more than a period exceeding in aggregate, 91 days in any twelve month period;
- An installation or structure used for exploration of natural resources provided that such activity continues for a period of 91 days or more; and

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Income Tax cont'd



❖ Requirement by entities with operations outside Kenya to file returns on activities in other jurisdictions

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

❖ Digital Service Tax

- The charging section only applicable to digital marketplaces. The charging section amended to include business carried out over the internet or an electronic network
- The Bill proposes to limit the imposition of the digital service tax (DST) to non-resident persons only
- The Bill proposes to exempt non- resident businesses that transmit messages via cable, radio, fiber, TV broadcasting, VSAT, internet, satellite or other such methods of communication from DST. Further, the Bill proposes to exempt income subject to withholding tax from DST.
- DST due on or before the twentieth day of the month following the end of the month in which the digital service was offered.

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Income Tax cont'd



❖ Carry forward of tax losses

- The Bill proposes to eliminate the 10-year limit provided to utilize taxable losses.
- The proposed amendment was important given the introduction of minimum tax that is based on gross revenues as opposed to profits.

❖ Thin Capitalization rules

- The Bill proposes to introduce new provisions governing interest payments that are not deductible for corporation tax purposes.
- Gross interest paid or payable to related non-resident persons or third parties in excess of thirty per cent (30%) of earnings before interest, taxes, depreciation and amortization (EBITDA) will be disallowable as per the Bill.
- Additionally, any income exempt from tax shall be excluded in the calculation of EBITDA.

Income Tax cont'd



❖ Tax rebate for graduate apprenticeships

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

❖ Limitation of benefits clause

- The new proposal provides that if an arrangement for relief from double taxation results in reduced tax being payable in Kenya by a person who is a resident of the other contracting state, such benefit shall not accrue to the person if fifty percent or more of the underlying ownership of the person is held by a person or persons who are not residents of the other contracting state.
- This aligns with international best practice

Income Tax cont'd



❖ Capital Allowances

- *The basis for computing capital allowance* – The bill proposes to change the basis from reducing balance to straight-line method
- *Definition of manufacture applicable to electricity producers* - The Bill proposes to amend the definition of manufacture to allow electricity producers who do not supply to the national grid to be eligible for investment allowances of 50% on the buildings and machinery used to generate electricity
- *Definition of civil works* - The new proposal defines civil works under the definition of manufacture to include: 1. roads and parking areas; 2. railway lines and related structures; 3. water, industrial effluent and sewage works; 4. communications and electrical posts and pylons and other electricity supply works; and 5. security walls and fencing.

Withholding Tax



❖ **WHT on service fees paid to non-resident subcontractors**

- The Bill proposes to increase the rate of withholding tax upon payment of service fees to non-resident subcontractors operating in the extractive industries from 5.625% to 10%.
- This applies to non-resident subcontractors who do not have a Kenyan permanent establishment (PE).

❖ **Withholding tax on professional fees on mining and petroleum sector**

- The Bill proposes to reduce the withholding tax rate for payments for the provision of management, training or professional fees from 12.5% to 10%.
- Purpose is to align with the WHT on service fee on sub-contractors

Value Added Tax



❖ **Widened scope of VAT on the digital economy**

- The Bill proposes to bring to VAT charge supplies made over the internet or an electronic network in addition to supplies made through a digital marketplace.

❖ **Restriction of input tax incurred on hiring, leasing or acquisition of passenger cars or minibuses**

- In addition to the current restriction of input tax on acquisition of passenger cars or minibuses the Bill proposes to restrict deduction of input tax on hiring or leasing of the same

❖ **Group VAT registration**

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

❖ **Pre-Approval of VAT Regulations by the National Assembly removed**

Value Added Tax cont'd



❖ VAT status changes – from exempt to standard rate

- Plain polythene film

❖ VAT status changes – from standard rate to exempt

- Food supplements
- Malaria diagnostic test kits
- Specialized equipment for the development and generation of solar and wind energy
- Medical ventilators and the inputs for the manufacture of medical ventilators
- The transfer of assets and other transactions related to the transfer of assets into real estate investment trusts and asset-backed securities
- Artificial teeth and dental fittings
- Physiotherapy accessories, treadmills for cardiology therapy and treatment

Value Added Tax cont'd



❖ VAT status changes – zero rated to Exempt

- The exportation of taxable services

❖ VAT status changes – zero rated to vatiable

- The supply of ordinary bread

Excise Duty



- ❖ Relief from excise duty paid on internet data services purchased for resale
- ❖ Sugar confectionary and chocolate manufactured locally to be subject to excise duty
- ❖ Imported glass bottles not subject to excise duty
- ❖ Change from 'specific rate regime' to 'ad valorem rate regime' for motorcycles - The Bill proposes to charge excise duty at the rate of 15% on imported motorcycles from specific rate of KShs 11,608.23 per unit.
- ❖ Introduction of excise duty on jewellery and nicotine products – nicotine pouches
- ❖ Reintroduction of excise duty on betting - The Finance Bill has proposed to reintroduce excise duty on betting activities at the rate of 20% of the amount wagered or staked.
- ❖ Introduction of Excise Duty on fees and commissions earned on loans

Personnel Taxes



❖ Introduction of insurance relief on NHIF contributions

- The Bill proposes to introduce a tax relief on individuals who make contributions to the National Hospital Insurance Relief (“NHIF”). The amount of insurance relief to be claimed is equivalent to 15% of the premiums paid with a cap of KES 5,000 per month.

Tax Procedures Act



❖ **Statute of limitation to be increased from 5 to 7 years**

- The period taxpayers are required to maintain tax records extended from five years to seven years;
- The period the commissioner is allowed to amend a tax return where there is no evasion, fraud or willful neglect, extended from five years to seven years;
- The period within which a taxpayer can lodge an application for amendment of a self assessment extended to seven years.

❖ **Miscellaneous fees and levies to be governed by the Tax Procedures Act, 2015**

❖ **Requirement to maintain financial records in Kenya Shillings relaxed for non-residents**

Tax Procedures Act



- ❖ Removal of the withholding VAT exemption for suppliers with perpetual credits
- ❖ Clarification on accrual of penalties and interest in relation to offset of tax due against refund amount
- ❖ Notice of objection in electronic form to be submitted even on weekends or public holidays
- ❖ Criminal and civil proceedings on the same tax dispute to run concurrently
- ❖ Protection of officers acting in good faith
- ❖ Digital service providers required to register for tax in Kenya
- ❖ Offence for failure to appear before the Commissioner broadened
- ❖ Repeal of the tax amnesty on rental income

Miscellaneous Fees & Levies Act



- ❖ Taxpayers will now be eligible to apply for a refund of overpaid fees and levies or fees and levies paid in error in accordance with the provision of section 47 of the Tax Procedures Act
- ❖ Goods valued at five billion shillings or more imported in the interest of the public or to promote an investment shall be exempt from IDF and RDL



Thank you

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