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Finance Act 2022 Insights
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Finance Act 2022 Insights

Introduction

The President signed the Finance Act, 2022 into law on 21 June 2022. The Act was published on 23 June 2022 in the special issue of the Kenya Gazette Supplement No. 106 (Acts No. 22) and gazetted on 8 July 2022 in Vol. CXXIV – No. 131 of the Kenya Gazette. The Act has introduced amendments to the various tax statutes in Kenya, and other laws such as the Stamp Duty Act, the Insurance Act, the Capital Markets Act, the Unclaimed Financial Assets Act, the Statutory Instruments Act, the Betting Lotteries and Gaming Act, the Evidence Act, the Kenya Roads Board Act, the Road Maintenance Levy Fund Act and the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015.

This publication outlines the changes introduced by the Act and their effective dates.

Contents

Corporate Tax

Enacted

We outline the key corporate tax changes and their effective dates below.

#	Enacted change	Details	Our comments
1.	Exemption from the EBITDA-based interest limitation rule	• The Act has excluded the following entities from the EBITDA-based interest limitation rule effective 1 July 2022. - Microfinance institutions and non-deposit taking microfinance businesses licensed 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 enactment is at least KES 5B; - Companies engaged in manufacturing whose cumulative investment is at least KES 5B for investments made outside Nairobi City County and Mombasa County; and - Holding companies that are regulated under the Capital Markets Act. • Prior to this amendment, only banks and financial institutions licensed under the Banking Act, and micro and small enterprises registered under the Micro and Small Enterprises Act, 2012 were excluded from the EBITDA based interest limitation rule.	• Given the heavy reliance on debt-financing by most businesses, the impact of the interest limitation rule is expected to be significant. • Although exclusion of more entities from the interest limitation rule is welcome, there is need to further review the EBITDA based interest deduction restrictions to cater for other businesses that would be adversely affected by the EBITDA provisions such as start-ups and locally controlled businesses.

Enacted

#	Enacted change	Details	Our comments
2.	Entities that have interest in excess of 30% of EBITDA will not be allowed to deduct foreign exchange losses	• The Finance Act has introduced a limitation on claiming of foreign exchange losses by companies that have interest in excess of 30% of EBITDA effective 1 July 2022. The foreign exchange losses shall be deferred and only deducted when the interest falls below 30% of EBITDA.	• This amendment will adversely affect entities that have foreign denominated transactions. Previously, the restriction only applied to foreign exchange losses arising from loans advanced by companies that controlled a thinly capitalised entity. The rule will need to be reviewed, as it will unjustifiably deny taxpayers a deduction of legitimate losses.
3.	Accelerated investment allowance	• The Act has made the following amendments regarding investment allowances effective 1 July 2022: - Amended the definition of manufacture to allow any person who incurs capital expenditure on buildings or machinery for generation of electricity for own use or off-grid supply to claim accelerated investment allowance of at least 50% in the first year of use. - Introduced investment deduction at 150% where the cumulative investment value for the four years preceding 1 July 2022 or the cumulative investment for the succeeding three years outside Nairobi City County or Mombasa is at least KES 2B; and - Extended the application of the 150% investment allowance on expenditure of at least KES 5B incurred to construct bulk storage and handling facilities for supporting the SGR operations of at least 100,000MT until 31 Dec 2023.	• These amendments are big wins for various taxpayers. Those with high value investments, especially outside Nairobi and Mombasa will benefit the most.

Enacted

#	Enacted change	Details	Our comments
4.	CGT rate increased from 5% to 15%	• The Act has increased the CGT rate from 5% to 15% effective 1 January 2023. Firms certified by the Nairobi International Financial Center Authority that invest at least KES 5B in Kenya and transfer such investment after 5 years shall be subject to CGT at the rate that was prevailing at the time the investments were made.	• Although the CGT rate of 15% is still lower than the average rate applicable across the African continent, the increase is steep. The government could have considered a progressive increase over time. Further, one would have hoped that with the increase in the CGT rate, indexation should have been introduced to ensure that the effects of inflation are factored in determining the taxable capital gains.
5.	Cash donations to any charitable organization to be deductible	• Effective 1 July 2022, all entities that donate cash to charitable organizations shall be allowed to deduct the donation from their taxable income. Previously, only donations to charitable organizations that are registered under either the Societies Act or the Non-Governmental Organizations Coordination Act were allowable for tax deductions.	• This move may encourage more entities to support charitable causes.
6.	DST exemption extended to non-residents operating in Kenya through a PE	• Effective 1 July 2022, non-residents with a permanent establishment (PE) in Kenya have been excluded from the DST regime. • This amendment therefore means that only non-residents who don't have a PE in Kenya will be liable to DST, as residents had already been excluded from the regime effective 1 July 2021.	• The income of a non-resident operating in Kenya through a PE is subject to corporate income tax (CIT) in Kenya. Taxing such persons through the DST regime would lead to excessive taxation, as the provision that allowed DST to be set-off against CIT was deleted effective 1 July 2021. The amendment is therefore welcome.

Enacted

#	Enacted change	Details	Our comments
7.	Entities that manufacture human vaccines to be exempt from income tax	• The Finance Act has amended the First Schedule to the Income Tax Act and exempted a company undertaking the manufacture of human vaccines in Kenya from any form of income tax including compensating tax.	• These changes will encourage investments into the human vaccine manufacturing and make Kenya a powerhouse in Africa. An example is the proposed Moderna manufacturing facility to be constructed in Kenya. The anticipated investment is USD 500 Million. The facility aims to ensure sustainable access to transformative mRNA innovation on the African continent. • In addition to the income tax exemption, the Finance Act has introduced other tax exemptions including VAT, RDL and IDF, which we have discussed in detail in the ensuing sections.
8.	Reduced CIT rate for shipping businesses and entities that operate a carbon market exchange or trading system	• The Finance Act has introduced a reduced corporate tax of 15% in the first 10 years of operations for: - A company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority; and - A company operating a shipping business in Kenya.	• The reduced corporate tax rate for a company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority (NIFCA) will encourage uptake of NIFCA facilities by entities operating a carbon market exchange or emission trading system. The move shall also encourage reduction of greenhouse emissions, which have been found to increase global warming. • The reduced CIT rate for shipping business is expected to attract more shipping businesses to set-up their base in Kenya. This will in turn promote the blue economy, which is a priority area for the Kenyan government.

Enacted

#	Enacted change	Details	Our comments
9.	Tax regime for businesses under a Special Operating Framework Arrangement	• The Finance Act has amended the Income Tax Act by introducing Section 28A immediately after Section 28 to prescribe the rate of tax for businesses under a special operating framework arrangement with the Government. • Based on the new section, a company which – a) is engaged in business under a special operating framework arrangement with the Government; b) incorporated for purposes of undertaking the manufacture of human vaccines; c) whose capital investment is at least ten billion shillings, shall be subject to the rate of tax specified in the special operating framework arrangement with the Government.	• We believe the provision is aimed at encouraging investments in specific sectors by introducing a special regime. • However, we would like to point out that: - The Third Schedule to the Income Tax Act already contains a provision, which provides that the rate of tax for a company engaged in business under a special operating framework arrangement with the Government, as specified in the Agreement shall continue to apply for the unexpired period as provided under the Agreement. While one may argue that the introduction of Section 28A may not be necessary based on this provision, we believe the Government considered it necessary to introduce the Section to capture new agreements so as to avoid ambiguity and disputes. - The Finance Act 2022 has, in addition to introducing Section 28A, also amended the Income Tax Act by exempting a company undertaking the manufacture of human vaccines from any income tax including compensating tax. There could be ambiguities where a special operating framework arrangement specifies a tax rate, hence, there is need to amend the law to remove such ambiguities.

Enacted

#	Enacted change	Details	Our comments
10.	Clean-up amendments	• Section 15(2)(l) of the Income Tax Act entitles a person to a deduction in respect of expenditure of a capital nature incurred in a year of income by the owner or tenant of agricultural land, as defined in the Second Schedule, on clearing that land, or on clearing and planting thereon permanent or semi-permanent crops. • The Act now amends Section 15(2)(l) of the Income Tax Act by deleting the words "as defined in the Second Schedule".	• The Tax Laws Amendment Act, 2020, which came into force on 25th April 2020 overhauled the Second Schedule. The repealed schedule defined "agricultural land" as *"land occupied wholly or mainly for the purposes of a trade of husbandry".* • There is currently no definition of the term "agricultural land", in the current Second Schedule, hence, the amendment to delete the words "as defined in the Second Schedule" appearing in Section 15(2)(l). The term should therefore take its ordinary dictionary meaning, as there is no other definition of the term "agricultural land" anywhere in the Income Tax Act.
		• The Act amends the Income Tax Act by deleting Section 15(2)(y). • Section 5(2)(y) entitled a person to a deduction in respect of expenditure incurred in the purchase or acquisition of an indefeasible right to use (IRU) a fibre optic cable by a telecommunication operator. The deduction was claimable at 5% per annum.	• The Second Schedule, as amended by the Tax Laws Amendment Act, 2020, entitles a telecommunication operator to an investment allowance at 10% per annum on any capital expenditure incurred on purchase or acquisition of a fiber optic cable IRU. • While it would generally be accepted that the allowance on IRU is applicable at 10% based on the doctrine of implied repeal, there was need to clean up the provisions of the law to avoid ambiguity and disputes between taxpayers and the Kenya Revenue Authority (KRA), hence the amendment to delete Section 5(2)(y).
		• The Act also amends the Income Tax Act by deleting Section 15(4A). The section allowed the Minister, upon the recommendation of the Commissioner, to extend the period of utilizing tax losses beyond ten years upon application.	• The Finance Act, 2021 removed the time limit for carry forward of tax losses. Previously, tax losses were allowable as a deduction in the year in which they arose and the subsequent 9 years of income. The removal of the tax loss carry-forward limitation rendered Section 15(4A) redundant, hence, the amendment by the Finance Act, 2022 to delete the provision.

Dropped

The following proposals were omitted in the Finance Act

#	Proposal	Details	Our comments
1.	Increase of the DST rate from 1.5% to 3%	• The proposal to increase the DST rate to 3% has been shelved.	• Proponents of the reduction argued that the taxation regime is still nascent and the same should be given an opportunity to be fully operationalized. The rise should be gradual and increasing the rate could stifle the Government's strategy of promoting the digital economy, which increased significantly following the advent of the COVID-19 pandemic.
2.	Restriction of the 100% investment allowance	• The proposal to introduce Paragraph 1B in the Income Tax Act's Second Schedule has been omitted in the Finance Act. The paragraph would have introduced a restriction on the applicability of Paragraph 1A, which entitles a person to claim an accelerated investment allowance of 100%: - Where the cumulative investment value in the preceding 3 years outside Nairobi City County and Mombasa County is at least KES 2B; - Where the investment value outside Nairobi City County and Mombasa County in the year of income under consideration is at least KES 250m; or - Where the person has incurred investment in a special economic zone. • Paragraph 1B would have restricted the applicability of the accelerated investment allowance under Paragraph 1A to hotel buildings, buildings used for manufacture and machinery used for manufacture. Further, the 100% investment allowance would not have applied to investments which, due to the nature of their business, were outside Nairobi and Mombasa Counties.	• The decision to shelve this amendment is welcome, as it will encourage investments outside Nairobi and Mombasa.

Dropped

The proposals reversing the amendments introduced by the Finance Act 2021 on the taxation of registered family trusts have also been omitted in the Finance Act

#	Proposal	Details	Our comments
3.	Taxation of Registered Family Trusts	• The Finance Bill had proposed to delete the following provisions from the Income Tax Act: - Paragraph 57 of the First Schedule to the Income Tax Act, which exempts the income or principal sum of a registered family trust from tax. - Paragraph 58 of the First Schedule to the Income Tax Act, which exempts capital gains relating to the transfer of title of immovable property to a family trust from tax and reintroducing the same as Paragraph 61; and - Subsection 3A of Section 11 to the Income Tax Act. • The above proposals have been omitted in the Finance Act.	• The proposal to repeal the exemption of a registered family trust and subsection 3A of section 11 were aimed at reinstating the treatment that applied prior to the amendment by the Finance Act, 2021 where the income of a registered family Trust was taxed in the hands of its Trustees as opposed to the beneficiaries. • The deletion of the income tax exemption on capital gains relating to the transfer of title of immovable property to a family trust under paragraph 58 and re-introduction of the same under paragraph 61 was intended to clean up the First Schedule, as it contains another paragraph 58 that deals with the exemption of income earned by an individual who is registered under the Ajira Digital Program. The motive of this amendment may not have been understood by the National Assembly.

Withholding Tax

Enacted

We outline the amendments that will affect withholding tax below

#	Enacted change	Details	Our comments
1.	Introduction of withholding tax on gains accruing to non-residents from financial derivatives	• The Finance Act has amended various sections of the Income Tax Act to introduce withholding tax at 15% on gains accruing to non-residents from transactions involving financial derivatives in Kenya (excluding financial derivatives traded on the Nairobi Securities Exchange) effective 1 January 2023. • Noteworthy is that the exclusion of gains accruing to non-residents from financial derivatives traded on the Nairobi Securities Exchange from the withholding tax regime was not in the Finance Bill. • The Act further introduced a provision that requires gains from financial derivatives accruing to non-residents to be taxed in accordance with Regulations made by the National Treasury Cabinet Secretary.	• This measure could discourage foreign traders from participating in the Kenyan financial derivatives market, as non-residents may shun the financial derivatives market in Kenya or pass the tax costs to resident traders by requiring all payments with respect to financial derivatives contracts to be net of taxes. • The exclusion of gains accruing to non-residents from financial derivatives traded on the Nairobi Securities Exchange from the withholding tax regime was necessary, as it could have curtailed trade on the Nairobi Securities Exchange derivatives market (NEXT), which was only launched on 4th July 2019. • We also note that the law requires the Cabinet Secretary to issue Regulations to provide guidelines on the taxation of financial derivatives. Although the Regulations are yet to be issued, we expect these to be issued before the amendments come into force on 1 January 2023.
2.	Interest and deemed interest on bearer bonds of at least 2 years duration issued outside Kenya to be subject to WHT of 7.5%	• The Act has reduced the withholding tax rate on interest and deemed interest arising from a bearer bond issued outside Kenya of at least two years duration to 7.5% effective 1 July 2022. Previously, the rate was 15% in the case of a government bearer bond and 25% in the case of any other bearer instrument.	• This measure is aimed at encouraging funding from foreign sources – in the wake of the government's increase in the debt ceiling.

Enacted

#	Enacted change	Details	Our comments
3.	Withholding tax exemptions on dividends to SEZ entities	• The Act has exempted dividends paid by Special Economic Zone enterprises, developers and operators licensed under the Special Economic Zones Act effective 1 July 2022. • Therefore, payment of such dividends should not attract withholding tax.	• Entities that establish in special economic zones shall benefit from this exemption. We believe that this measure is intended to attract investments within gazetted special economic zones.
4.	Withholding tax exemption on payments made to non-residents by a human vaccine manufacturing entity	• The Act has, with effect from 1 July 2022, introduced exemptions on: - Deemed interest in respect of an interest free loan advanced to a company undertaking the manufacture of human vaccines; and - Payments made to non-resident service providers not having a permanent establishment in Kenya in respect of services provided to a company undertaking the manufacture of human Vaccines • The exemptions effectively imply that no withholding tax should apply on the above transactions.	• These exemptions are aimed at encouraging investments into the human vaccine manufacturing space and make Kenya a powerhouse in Africa. • There are also other amendments including income tax exemptions, VAT exemptions and miscellaneous levies exemptions on importation of products by a company undertaking the manufacture of human vaccines that have been introduced by the Finance Act.

Personal Tax

Enacted

The key changes that affect personal tax are as outlined below. All these changes take effect on 1 July 2022.

#	Enacted change	Details	Our comments
1.	Introduction of a definition for "permanent home"	• The Act has introduced a definition of "permanent home" to the Income Tax Act. • Based on the Act, *"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.	• The definition will aid in determining the tax residency for individuals. Kenyan citizens may not necessarily become tax resident if they are not considered to have a permanent home in Kenya or to have close personal or economic interests in Kenya. On the other hand, foreigners who may be considered to have a permanent home in Kenya will trigger residency in Kenya if they are in Kenya even for a day in a year of income.
2.	Benefits accruing from an ESOP to be taxed on the date an employee exercises the option	• The Act has introduced the following amendments on the taxation regime of Employee Share Ownership Schemes (ESOPs): - Captured both schemes registered with the Kenya Revenue Authority (KRA) and those that are not registered; - Changed the tax base of benefits accruing from an ESOP to 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 the employee exercises the option. Previously, the value of the benefit was computed as the difference between the market value, per share, and the offer price, per share, at the date the option is granted by the employer; and - Changed the tax point of benefits accruing from an ESOP to the date the option is exercised. The tax point was previously end of the vesting period.	• The amendments are welcome as they provide guidance on the taxation of unregistered ESOP schemes. There were no legal provisions that guided the taxation of these schemes, and taxpayers only relied on guidance provided by KRA. • The amendments may however result in a higher tax burden for employees participating in registered ESOP schemes who were previously taxed on the difference between the market price per share and the grant price per share at the date of grant of the shares. • In addition, employees will now be taxed when the benefit is realized as opposed to the previous provision, which deemed the benefit to accrue at the end of the vesting period even though the employee may not exercise the option.

Enacted

#	Enacted change	Details	Our comments
3.	Inclusion of a gender-neutral provision with respect to life insurance relief	• The Act has amended Section 31(1)(a) of the Income Tax Act by deleting the words, “he has paid a premium for an insurance made by him on his life or the life of his wife or of his child” and substituting the words thereof with “the individual has paid a premium for an insurance made by the individual on the individual’s life of (sic) the life of the individual's spouse or child”.	• This amendment is aimed at providing a more gender – neutral provision that allows all taxpayers to claim insurance relief.
4.	Clean-up of the Income Tax Act	• The Act has deleted Section 37(3) of the Income Tax Act, which allowed the Commissioner to remit the whole or part of any penalty imposed under section 37 of the Income Tax Act up to a maximum of five hundred thousand shillings per employer per annum.	• This harmonizes the Income Tax Act and the Tax Procedures Act (TPA) by removing the redundant sections of the law.

Transfer Pricing

Enacted

The Act has expanded the scope of transactions subject to TP and introduced a CbCR notification requirement for multinationals with gross turnover of KES 95B

#	Enacted change	Details	Our comments
1.	Expansion of the scope of transactions covered by TP rules	• The Act has, with effect from 1 January 2023, expanded the scope of transactions covered by the Transfer Pricing (TP) rules to include transactions with un-related non-residents located in a preferential tax regime, their associated enterprises and their PEs in Kenya. • A preferential tax regime has been defined as: - any Kenyan legislation, regulation or administrative practice which provides a preferential rate of tax to income or profit, including reductions in the tax rate or the tax base; or - a foreign jurisdiction which does not tax income; taxes income at a rate that is less than 20%; does not have a framework for the exchange of information; or lacks transparency on corporate structure, ownership of legal entities located therein, beneficial owners of income or capital, financial disclosure, or regulatory supervision.	• This measure introduces the burden of ensuring transactions between a Kenyan entity and entities located in the so-called tax havens or uncooperative jurisdictions are at arm's length, as it expands the concept of TP beyond the international guidelines. • This amendment shows that there may be concerns that entities located in preferential tax regimes are a conduit for tax avoidance and/or evasion. Although these concerns could be valid, the focus on non-related entities may not be justified and places an undue burden on resident entities dealing with independent parties. A prudent approach would be to focus on related party dealings and adoption of other measures that have gained global acceptance under the Base Erosion and Profit Shifting (BEPS) action plans which address the concerns of revenue authorities.

Enacted

#	Enacted change	Details	Our comments
2.	Country by Country Reporting Obligations	• The Act has, with effect from 1 July 2022, introduced the Country-by-Country Reporting (CbCR) requirement for Multinational Enterprises (MNEs) resident in Kenya with a gross turnover of KES 95B (approx. EUR 750M). • The CbC report shall need to be filed within 12 months after the last day of the reporting year of the group. • The MNE will be required to notify the Commissioner not later than the last day of the reporting financial year of the Group whether it is the Ultimate Parent Entity (UPE) of the group or the Surrogate entity. In case the MNE is neither the UPE nor surrogate entity, the MNE should provide the identity of the constituent entity, which is the UPE or surrogate entity and the tax residence of that entity. • The Act defines a constituent entity, surrogate entity and UPE as follows: **A constituent entity** means: - any separate business unit of an MNE that is included in the consolidated financial statement of the MNE for financial reporting purposes or would be so included if the equity interest of such business unit of the MNE were traded in public securities exchange, or - any business unit that is excluded from MNEs consolidated financial due to materiality or - a PE of any separate business of the MNE provided that the business unit prepares a separate financial statement for such PE for tax reporting or other business purposes. **A surrogate entity** means one constituent of the MNE appointed by the Group to file the CbCR in the constituent entity's jurisdiction of tax residence, on behalf of the Group. **An ultimate parent entity (UPE)** means (i) an entity that is resident in Kenya for tax purposes, (ii) is not controlled by another entity (iii) owns or controls a MNE Group.	• This amendment will enable the KRA to have visibility of the financial and related information that will aid in assessing TP risks. For MNEs, this means additional transfer pricing compliance and reporting requirements.

Enacted

#	Enacted change	Details	Our comments
3.	Masterfile and local file filing requirements	• The Act has also introduced the Masterfile and local file filing requirements for UPEs and constituent entities of MNEs with gross turn over of KES 95B. The Masterfile and local files shall need to be filed within 6 months after the last day of the reporting financial year of the MNE. • The details to include in the master file include: - a detailed overview of the group and key value drivers; - descriptions of the supply chain of the key products and services; - the group's research and development policy; - a description of each entity's contribution to value creation; - information about intangible assets and group intercompany agreement associated with them including any transfers of intangible assets during the tax period; - information about financing activities of the group; - the consolidated financial statement of group, tax rulings if any made in respect of the group; and - any other information as required by the Commissioner. • The local file should include: - details of the resident entity activities within the MNEs; - the management structure of the resident entity; - business strategies including structuring; - description of the material-controlled transactions; - entity's business and competitive environment; - international transactions and amounts paid/received by the resident constituent entity; and - any other information that the Commissioner may require.	• This change is line with Action 13 of the BEPS Action Plans, that require MNEs to file a three-tier TP documentation (Masterfile, local file and CbC reports) with tax authorities in countries where they have taxable presence. • The Masterfile and local file filing requirements will apply to MNEs with a gross turnover of KES 95B. The 2006 Kenyan TP rules require entities that have cross border related party transactions to maintain TP documentation and submit to the Commissioner upon request. MNEs that meet the KES 95B gross turnover threshold are required to file Masterfile and local files while other MNEs below the threshold will maintain TP documentation in line with the existing TP rules.

Value Added Tax

Enacted

The key VAT changes introduced by the Act are outlined below. All the VAT changes are effective on 1 July 2022

#	Enacted change	Details	Our comments
1.	Exported services no-longer exempt from VAT	• The Act has made the following changes on exported services: - Removal of the exportation of taxable services from the VAT Act's First Schedule thus making the supply a standard rated supply; and - Introduction of the exportation of taxable services in respect of Business Process Outsourcing in the VAT Act's Second Schedule thus making the supply zero-rated.	• While changing the status of Business Process Outsourcing Services to zero-rated is a welcome move, the Act does not define the term "business process outsourcing". It is therefore unclear which services are covered under the newly introduced paragraph. The ambiguity may propagate increased disputes between the KRA and taxpayers. • The limitation of exported services that attract the zero-rate to business process outsourcing services precludes all other non-qualifying services from enjoying the zero-rate. This negates the 'Destination Principle' as recommended by the Organization for Economic Co-operation and Development's (OECD) International VAT/GST Guidelines, which is the basis of international best practice.
2.	VAT on LPG reduced from 16% to 8%	• The Act has reduced the VAT rate applicable on liquefied petroleum gas (LPG), including propane from 16% to 8%.	• The price of LPG has almost doubled over the last two years following the introduction of VAT on LPG effective 1 July 2021, and challenges with the supply chain in the last 3 months. The reduction of the rate should therefore act as a cushion to citizens and discourage the use of alternatives that may not be environmentally friendly.

Enacted

#	Enacted change	Details	Our comments
3.	Fertilisers and inputs or raw materials for manufacture of fertilisers to be zero-rated	• The Act has changed the status of fertilizers from exempt to zero-rated. • Further, inputs or raw materials locally purchased or imported by manufacturers of fertilizers as approved from time to time by the Cabinet Secretary responsible for Agriculture shall be zero-rated for VAT purposes.	• These changes are welcome, as they will reduce the cost of manufacturing fertilizers in Kenya and the final price to farmers. • The expectation is that the reduced cost of the farm inputs shall translate to cheaper agricultural products in the Kenyan food basket.
4.	Input tax to be deductible only if it is declared in the VAT return within 6 months	• The Act amends Section 17 (1) of the Value Added Tax Act, 2013 (“VAT Act”) by linking the deduction of input tax to the return filed for the tax period in which the taxable supply occurred.	• This is an additional legislative requirement for VAT registered taxpayers to file a VAT return on the iTax system in order to qualify as having validly deducted input tax.
5.	Additional documentation for input tax deduction by importers of petroleum products through the Open Tender System	• The Act amends Section 17(3) of the VAT Act by introducing a paragraph that requires Participants in the Open Tender System (OTS), for the importation of petroleum products that have been cleared through a nonbonded facility, to have a custom entry showing the name and PIN of the winner of the tender and the name of the other oil marketing company (OMC) participating in the tender in order to claim input tax. However, any input tax that may have been incurred before the coming into force of this provision, shall be claimed within 12 months after this provision comes into force.	• This is a welcome move, as it safeguards the deductible input tax for Oil Marketing Companies (OMCs) that would otherwise have been lost due to the strict documentary requirements under Section 17(3) of the VAT Act. • Noteworthy, the paragraph allows deduction of input tax suffered previously on products imported through non-bonded facilities within the next 12 months.

Enacted

#	Enacted change	Details	Our comments
6.	Input tax restriction to six months upon amendment of VAT returns	• The Act has amended Section 31 of the Tax Procedures Act ("TPA") to limit allowability of input tax for amended VAT returns to within six months from the time of supply or importation.	• While Section 31 of the TPA allows registered persons to amend their VAT returns within a period of five years from the time of filing the original returns, an amendment of the VAT return may only admit input tax that is within six months from the time of supply. • This amendment seeks to prevent instances where a registered person may seek to amend their VAT returns to admit input tax that is outside the six-month rule.
7.	Repeal of the provisions for refund of taxes paid in error	• The Act has repealed Section 30 of the VAT Act, thus deleting the provisions under the VAT law relating to refund of VAT paid in error. • The Act has also introduced Section 47A and 47B of the Tax Procedures Act (TPA) as a remedy for taxes paid in error. Based on the amended Sections of the TPA, a claim for refund of tax paid in error should be lodged within six months after the date of the tax payment.	• The time limit within which a taxpayer should lodge a refund of VAT paid in error has been halved from the twelve months that was allowed under the deleted Section 30 of the VAT Act. • While this may be a move to harmonize the provisions of tax statutes relating to refunds, the changes to Section 47(1)(b) of the TPA severely restricts a taxpayer's entitlement to refund of tax overpayments. It would be ideal to align the timeline to the five-year period allowed for other taxes.
8.	Refund of VAT credits arising from supplies to official aid-funded projects	• The Act has amended Section 17(5) of the VAT Act to allow registered persons to apply for refund of excess input tax on taxable supplies made to an official aid funded project, as may be approved by the Cabinet Secretary. The refund application should be lodged within 12 months.	• This amendment will encourage taxpayers to make supplies to official aid-funded projects, as it provides a mechanism for registered taxpayers to seek tax refunds from the Commissioner for the excess input tax incurred for such projects.

Enacted

#	Enacted change	Details	Our comments
9.	Penalties and interest on Import VAT to be based on the TPA	• The Act has amended Section 22 (4) of the VAT Act to allow the Commissioner to impose penalties and interest on imported goods as prescribed by the TPA. • The Act further caps the interest payable to the principal tax due in line with the *in duplum* rule.	• In the recent past, there has been an increased focus by the Commissioner to harmonize all applicable domestic tax laws in the Kenya. • As VAT is predominantly viewed as a domestic tax, the change, in our view, seeks to align penalties and interest applicable to VAT imposed and collected at importation to those provided for under the TPA.
10.	Expansion of the scope of digital market supplies subject to VAT	• The Act has made the following changes regarding VAT on digital market supplies: - Amended the definition of a digital marketplace under Section 5 (9) of the VAT Act to mean an online platform which enables users to sell goods or provide services to other users; - Amended Section 10 of the VAT Act and removed supplies made through a digital marketplace from the purview of imported services; and - Amended Section 34 (1) of the VAT Act to exclude persons supplying imported digital market services from the provisions of Section 34 regarding the turnover threshold for registration. • The Government has, through Gazette Notice dated 27 May 2022, also amended the VAT (Digital Marketplace Supplies) Regulations, 2020 to operationalize the above changes.	• The changes to the definition of digital marketplace under Section 5(9) of the VAT Act aim to expand the ambit of supplies that fall within the scope of digital marketplace supplies. • The exclusion of digital marketplace supplies from the purview of imported services means that VAT on business-to-business transactions provided through a digital marketplace should no-longer be accounted through the reverse VAT regime. Therefore, the non-resident providers of these supplies shall need to register for VAT through the simplified VAT registration framework and comply with the VAT obligations on their supplies. • The exclusion of persons supplying imported digital market supplies from the provisions of Section 34 means that the non-resident providers of the digital market supplies should register for VAT even if they do not meet the annual turnover threshold of KES 5 million.

Enacted

#	Enacted change	Details	Our comments
11.	Exemption of certain goods in the healthcare sector from VAT	• The Act has introduced the following goods into the First Schedule to the VAT Act (the VAT exemption list): - 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 to health; - Medical oxygen supplied to registered hospitals; - Urine bags, adult diapers, artificial breasts, colostomy or ileostomy bags for medical use; and - 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 ten billion shillings, subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health.	• The changes to exempt the above medical supplies align with addressing the cost of healthcare as envisioned in the Big 4 agenda. • Our view is that this move together with the tax incentives already enjoyed by medicaments under the VAT law will further reduce the cost of medical supplies and pharmaceutical products thus allowing Kenyans to access affordable healthcare. • Further, the exemption of plant and machinery for the manufacture of pharmaceutical products from VAT is an effort to combat the COVID-19 pandemic and address the challenge of access to affordable and quality healthcare. • We expect that the changes will further encourage additional investment in the health sector. An example is the proposed Moderna manufacturing facility to be constructed in Kenya. The anticipated investment is USD 500 Million. The facility aims to ensure sustainable access to transformative mRNA innovation on the African continent.

Enacted

#	Enacted change	Details	Our comments
12.	VAT exemption on locally manufactured passenger vehicles and inputs for the manufacture of these vehicles	• The Act has exempted the following goods from VAT: - Inputs and raw materials used in the manufacture of passenger motor vehicles; and - Locally manufactured passenger motor vehicles. The term "locally manufactured passenger motor vehicle" has been defined to mean a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose total value comprises at least thirty per cent of parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.	• In the recent past, the Government has progressively initiated various tax incentive schemes to promote the local assembly and manufacture of motor vehicles. • These measures are aimed at reducing the importation of used motor vehicles and to boost the local manufacturing sector. • The exemption of inputs used in local manufacturing of passenger vehicles from VAT will reduce the cost of local assembly as envisioned by the continuous efforts made by the Government to promote this sector. Importantly, exemption of inputs safeguards the players in the sector against potential disallowance of input tax that would be occasioned by exemption of the final product. • In our view, the exemption from VAT of locally manufactured passenger vehicles will further make the vehicles cheaper and more competitive compared to the imported vehicles.
13.	VAT exemption on capital goods used to promote investment in the manufacturing sector	• The Act has introduced a VAT exemption on capital goods which, subject to the determination of the Cabinet Secretary, are used to promote investment in the manufacturing sector. The exemption shall only apply where the value of the investment is two billion shillings or more.	• This change seeks to incentivize investors to make large investments in the manufacturing sector thus leading to economic growth. Such projects will provide employment and market for other stakeholders in the economy.

Enacted

#	Enacted change	Details	Our comments
14.	Exemption of bioethanol vapour (BEV) stoves from VAT	• The Act has included the supply of bioethanol vapour (BEV) stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel) under the First Schedule of the VAT Act, thus exempting them from VAT.	• BEV stoves are mainly used in the hospitality sector, specifically in catering services. • We expect the change to effectively reduce the cost of the cooking appliances and plate warmers. This also promotes the use of bioethanol vapour which is a bio-renewable source of fuel.
15.	Clarification on the VAT status of protective clothing	• The Act has deleted paragraph 9 of the Second Schedule to the VAT Act (the VAT zero-rating schedule), which lists the supply of 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 fire fighting from as a zero-rated supply.	• The deleted provision is replicated under Paragraph 96 of the First Schedule to the VAT Act, which means that the supply is listed as exempt. • This is a move to clean up the replicated supplies in the first and second schedules to provide clarity on the applicable VAT rate. • The deletion now clarifies that the supply of these protective articles will be exempt from VAT.
16.	Exemption from withholding VAT	• The Act has amended Section 42A (1) of the TPA to exempt supplies made by “registered manufacturers whose value of investment in the three years leading to 1 July 2022 is at least KES 3b” from the withholding tax regime. • In effect, withholding VAT agents will not be required to deduct VAT on supplies from registered manufacturers whose value of investment in the three years leading to 1 July 2022 is at least KES3b.	• We believe KRA will provide a mechanism for the operationalization of this provision, for instance, issuance of WHVAT exemption certificates or a system intervention. This change may be aimed at preserving cash-flows of the manufacturers, as they would be expected to have substantial input tax credits from their investments in the 3 years succeeding the investments.

Dropped

The following proposals contained in the Finance Bill, 2022 have been omitted in the Finance Act

#	Proposal	Details	Our comments
1.	Clarification of the VAT status of flour	• The Finance Bill had proposed to delete Paragraph 108 of Part A of the VAT Act's First Schedule, which deals with exempt supplies, and Paragraph 20 of Part A of the Second Schedule, which deals with zero-rated supplies. • The two paragraphs confer the supply of maize (corn) flour, cassava flour, and wheat or meslin flour both zero-rated and exempt status. Noteworthy, there is an additional paragraph, Paragraph 22 under the Second Schedule that zero-rates the same products. Paragraph 22 is the most recent of the three.	• The proposed deletions were aimed at cleaning up the schedules so as to maintain a zero-rated status of these products under Paragraph 22. • However, we note that the proposed deletions have been omitted from the Finance Act 2022. In effect, the law continues to have three paragraphs under the Schedules of the VAT Act, 2013 that speak to the VAT treatment of the same products. • While, based on the doctrine of implied repeal, it would generally be accepted that the said products are currently zero-rated, there is need to clean up the provisions of the law to avoid ambiguity and disputes between taxpayers and the Kenya Revenue Authority.
2.	Additional requirement for deduction of input tax	• The Bill had proposed to leave the scope of documentation that may be required to support input tax deduction at the Commissioner's discretion.	• This proposal would have likely led to uncertainty and arbitrary application of the law by the Commissioner, potentially resulting in disputes due to perceived non-compliance. • The provision has been omitted from the Finance Act.
3.	Change of VAT status from exempt to taxable at 16%	• The Finance Bill had proposed to remove from the VAT exemption list, the supply of 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.	• The deletion would have rendered the services taxable at 16%. However, this provision has been omitted from the Finance Act.

Excise Duty

Enacted

The key excise duty changes are outlined below. All excise duty changes take effect on 1 July 2022 unless indicated otherwise

#	Enacted change	Details	Our comments
1.	Exemption of certain products from inflationary adjustments	• The Act amends Section 10 of the Excise Duty Act, effective 1 January 2023, to allow the Commissioner General, to exempt certain products from the inflation adjustment after considering the circumstances prevailing in the economy. The exemption will be subject to approval by the Cabinet Secretary (CS) for the National Treasury and will communicated through a notice in the Kenya Gazette.	• This move is expected to cushion Kenyans from high prices of essential commodities.
2.	Excise duty on imported goods to be subject to the penalties and interests stipulated in the TPA	• The Act has amended Section 36(4) of the Excise Duty Act to provide for application of the Tax Procedures Act provisions with regards to imposition of penalties and interest on excise duty on imported goods. • Additionally, the Act caps the maximum penalty and interest amount, if payable, to the principal amount in line with the *induplum* rule.	• Previously, a taxpayer was required to rely on the East African Community Customs Management Act, 2004, Act, which stipulates an interest of 2% per month. The Act does not cap the interest and is also silent on whether it is compounded or computed as simple interest. The amendment by the Finance Act would thus cushion importers from excessive interest.
3.	Excise duty on liquid nicotine	• The Act has deleted from the First Schedule electronic cigarettes (which attract KES 4,171.59 per unit excise duty) and cartridges used in electronic cigarettes (which attract KES 2,781.43 per unit excise duty). In its place, the classifications and rates shown in the table below have been introduced:	• This measure is aimed at bringing into the ambit of excise duty, other liquid nicotine products that have been recently introduced into the Kenyan market in order to discourage their consumption and/ or increase tax revenue.

Excisable product	Excise duty rate
Electronic cigarettes and other nicotine delivery devices	40%
Liquid nicotine for electronic cigarettes	KES 70 per milliliter

Enacted

#	Enacted change	Details	Our comments
4.	Definition of ex-factory selling price of locally manufactured excisable goods	• The Act has amended Section 11 of the Excise Duty Act to read as follows: - The ex-factory selling price of excisable goods shall be: a) if the excisable goods are sold by the manufacturer to a purchaser in an arm's length transaction, the price payable by the purchaser.	• Previously, Section 11 of the Excise Duty Act defined the ex-factory selling price of excisable goods sold by a manufacturer to a purchaser in a transaction that is not at arm`s length as the price payable for the goods. • In our view, this provision was against the general principles of valuation of arm`s length transactions where the price payable for goods is accepted as the transaction value for tax purposes. The open market value of goods is ordinarily used as the taxable value for transactions between related parties particularly where the relationship is deemed to have influenced the price. • This change is in our view intended to rectify what appeared to be a drafting error of Section 11 of the Excise Duty Act.
5.	Excise duty on imported potatoes	• The Act has expanded the scope of imported potatoes subject to excise duty (currently at 25%) to include potatoes of Tariff Code 0710.10.00, 2004.10.00 and 2005.20.00.	• Previously, only potatoes of Tariff Heading 0701 were subject to excise duty. • This amendment is an attempt to protect the local market from cheap imports.
6.	Excise duty on imported ready to use SIM cards	• The Act has introduced excise duty on imported ready to use SIM cards at KES 50 per SIM card.	• We believe this move is an attempt to encourage personalization of SIM cards in Kenya – hence encouraging value addition within Kenya. Further, it has been argued in other countries that imported ready to use SIM cards could pose security concerns as these might have been produced with malicious embedded software. • The retail price of SIM cards will be expected to increase, as mobile service providers will be expected to pass the excise duty cost to its customers.

Enacted

#	Enacted change	Details	Our comments
7.	Excise duty on fees charged by digital lenders	• The Act has introduced excise duty on fees charged by digital lenders at 20%.	• This measure will increase the cost of digital lending. • Digital lending has grown tremendously in Kenya in the recent past. Whereas certain fees (excluding interest) charged by regulated Banks and microfinance institutions on digital lending were subject to excise duty, fees charged by previously unregulated digital credit providers were not excisable. The Central Bank of Kenya (Amendment) Act, 2021, which came into force on 23 December 2021 expanded the Central Bank of Kenya's licensing mandate to include digital credit providers. This essentially meant that digital credit providers would fall within the ambit of financial institutions and therefore required to charge excise duty on other fees charged to their customers. • The Act has now introduced a provision in the First Schedule of the Excise Duty that is more specific to digital lenders. Applying the *generalia specialibus non derogant* doctrine, the latter provision derogates the former, with the implication that all fees charged by digital lenders would be subject to tax at the rate of 20% under Part II, Paragraph 6 of the First Schedule. • The absence of a definition of "fees" and "digital lenders" in the Excise Duty Act may lead to ambiguity on the interpretation of the scope of fees subject to excise duty and this is likely to result in disputes between KRA and digital lenders. • Where the ordinary definition of the term "fees" is taken, our view is that fees charged by digital lenders in any form including interest will be subject to excise duty. • The imposition of excise duty on interest charged by digital lenders would contradict the approach taken on core incomes of financial institutions such as interest for banks, premiums for insurers and premium based commissions for insurance brokers where these incomes are exempted from excise duty.

Enacted

#	Enacted change	Details	Our comments
8.	Excise duty on plastics of Tariff code 3923.90.90	• The Act has introduced excise duty at 10% on articles of plastic of Tariff Code 3923.90.90 (other articles of plastic for conveyance or packing). Previously, the Excise Duty Act only provided for excise duty at 10% on carboys, bottles, flasks and similar articles of Tariff Code 3923.30.00.	• This measure is aimed at generating more tax revenue as well as discouraging the use of plastics of Tariff code 3923.90.90
9.	Exemption of local passenger vehicles from excise duty	• The Act has exempted local passenger vehicles from excise duty. • The term “Local passenger vehicles” has been defined as vehicles for transportation of passengers manufactured in Kenya and whose ex-factory value comprise at least 30% of local content. “Local content” has also been defined as parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.	• This exemption is geared towards making locally manufactured passenger vehicles competitive, hence discouraging importation and encouraging the local manufacturing industry.
10.	Excise duty exemption on neutral spirits for use by registered pharmaceutical manufacturers	• The Act has exempted neutral spirit imported or purchased locally by registered pharmaceutical manufacturers from excise duty.	• Previously, the manufacturers could recover the excise duty paid on the neutral spirits through a refund application. The exemption should therefore address cash flow challenges faced because of the lengthy process of claiming the refund.
11.	Removal of excise duty on imported furniture	• The Act has deleted imported furniture of any kind used in offices, kitchen, bedroom and other furniture, from Part I of the First Schedule of the Excise Duty Act, thus removing them from the excise duty regime.	• The duty had been introduced through the Finance Act 2021 and applied at 25% in a bid to promote local manufacture of these products. The removal of the duty is motivated by other factors that affect local production of furniture such as availability of raw materials and cost of production.

Enacted

#	Enacted change	Details	Our comments
12.	Removal of duty on locally manufactured plastics	• The Act has removed excise duty on locally manufactured unsaturated polyester of tariff code 3907.91.00, alkyd of tariff code 3907.50.00, emulsion VAM of tariff code 3905.91.00, Emulsion Styrene Acrylic of tariff code 3903.20.00, Homopolymers of tariff code 3905.19.00, Emulsion B.A.M of tariff code 3906.90.00.	• This measure is intended to promote local manufacturing of the products. • If imported, the items will attract excise duty at 10%.
13.	Removal of betting on horse racing from the excise duty regime	• The Act has amended Part II, Paragraph 4A of the First Schedule to the Excise Duty Act to exclude betting on horse racing from excise duty.	• Betting is subject to excise duty at 7.5% of the amount wagered or staked. • This amendment is aimed at encouraging horse racing.

Enacted

#	Enacted change	Details
13.	Increase in the excise duty rate	• The Act has increased excise duty on specific products mostly products considered as "harmful products" and "luxurious products as tabulated below:

Product description	Previous rate	New rate
Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter.	KES 12.17 per litre	KES 13.30 per litre
Cosmetics and Beauty products of Tariff Heading No. 3303, 3304, 3305 and 3307	10%	15%
Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%	KES 121.85 per litre	KES 134 per litre
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	KES 208.20 per litre	KES 229 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%	KES 278.70 per litre	KES 335.30 per litre
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	KES 13,906.04 per kg	KES 15,296.60 per kg
Cigarette with filters (hinge lid and soft cap)	KES 3477.61 per mille	KES 3,825.99 per mille

• ...cont. next page

Enacted

#	Enacted change	Details
	Increase in the excise duty rate …cont.	

Product description	Previous rate	New rate
Cigarettes without filters (plain cigarettes)	KES 2502.74 per mille	KES 2,752.97 per mille
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	KES 9734.45 per kg	KES 10,707.88 per kg.
Imported sugar confectionery of Tariff Heading 1704	KES 36.74 per kg	KES 40.37 per kg
White chocolate, chocolate in blocks, slabs or bars of tariff numbers 1806.31.00, 1806.32.00 and 1806.90.00	KES 220.31 per kg	KES 242.29 per kg
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	KES 1,259.64 per kg	KES 1,500 per kg
Jewellery of tariff heading 7113 and imported jewellery of tariff heading 7117"	10%	15%

- This amendment is primarily geared towards generating additional revenue for the Government. It is expected that the Commissioner General will also adjust excise duty rates for inflation on the same products later in the year. The increase in excise duty rates is likely to have adverse effects on the affected industries particularly considering recent annual inflationary adjustments on the same products.

Dropped

The following proposals contained in the Finance Bill, 2022 were omitted in the Finance Act

#	Proposal	Details
1.	Excise duty on ice cream and other edible ice	• The proposal to introduce excise duty on ice cream and other edible ice whether or not containing cocoa of tariff number 2105.00.00 was shelved.
2.	Increase of excise duty	• The following proposals were also shelved: - Increase of excise duty on bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices from KES 6.03 per litre to KES 6.60 per litre; - Increase of duty on powdered beer from KES 121.85 per litre to KES 134 per litre; - Increase of excise duty on motorcycles of Tariff Heading 8711 other than motorcycle ambulances and locally assembled motorcycles from KES 12,185.16 per unit to KES 13,403.64 per unit; and - Increase of excise duty on betting, gaming and price competition from 7.5% to 20%.
3.	Exemption of fertilized eggs for incubation from excise duty	• The proposal to exempt fertilized eggs for incubation of Tariff Code 0407.11.00 and 0407.19.00 imported by hatcheries was shelved.
4.	Excise duty on advertisement fees	• The proposal to introduce fees charged on advertisement by television stations, print media, billboards and FM radio stations on alcoholic beverages, betting, and gaming, lottery and prize competitions was shelved.

Miscellaneous Fees and Levies

Enacted

The key changes to the Miscellaneous Fees and Levies Act are outlined below. All these changes take effect on 1 July 2022 unless indicated otherwise

#	Enacted change	Details	Our comments
1.	Approval of the National Treasury CS no-longer required to apply the reduced rates IDF and RDL rates of 1.5%	• The Finance Act has amended Section 7(2A) and 8(2)(A) of the Miscellaneous Fees and Levies Act to provide that the reduced Railway Development Levy (RDL) and Import Declaration Fee (IDF) rates of 1.5% on raw materials and intermediate products imported by manufacturers shall apply upon recommendation to the Commissioner by the Cabinet Secretary for matters relating to industry. • Further the reduced rate of 1.5% on inputs for the construction of houses under an affordable housing scheme shall apply upon recommendation to the Commissioner by the Cabinet Secretary for matters relating to housing.	• The reduced RDL and IDF rates would previously apply upon securing approval from the National Treasury Cabinet Secretary upon recommendation from the Cabinet Secretary for matters relating to industry or housing as appropriate. • The amendment removes the requirement to seek approval from the National Treasury Cabinet Secretary to apply the reduced rates. This is a welcome change that is geared towards simplifying the process of seeking approval to apply reduced IDF and RDL rates on raw materials/intermediate goods and inputs for construction of houses under the affordable housing scheme. • The measure will reduce the lead time for securing approvals to apply reduced IDF and RDL rates and will encourage manufactures and importers of construction inputs to take advantage of the incentive.
2.	Introduction of export levy on iron ores and concentrates	• The Act has amended Part I of the First Schedule to the Miscellaneous Fees and Levies Act to introduce an export levy on iron ores and concentrates, including roasted iron pyrites at USD 175 per tonne.	• Iron ore is a critical ingredient in the steel making industry. Kenya has discovered deposits of iron ores in counties like Kilifi. The introduction of export levy on iron ores is perhaps geared towards discouraging the exportation of iron ore to protect local manufacturers who rely on iron ore from competition in the export market.

Enacted

#	Enacted change	Details	Our comments
3.	Effective date for annual inflation adjustment on export levy	• The Act has amended the effective date for inflationary adjustment of export levies from 1 July of every year to a date before 1 October of every year.	• The change is intended to allow the Commissioner General to comply with the requirements of the Statutory Instruments Act, which requires statutory instruments such as legal notices to be subjected to public participation and tabled before parliament for approval. • The effective date now aligns with the effective date for inflationary adjustment of excise duty rates.
4.	Certain goods for use in the health-care sector to be exempt from IDF and RDL	• The Act has introduced IDF and RDL exemptions on the following products: - Inputs and raw materials imported by manufacturers of pharmaceutical products upon recommendation by the Cabinet Secretary for Health. - Goods imported for use in the construction and maintenance of human vaccine manufacturing plants as approved by the Cabinet Secretary for the National Treasury on recommendation of the Cabinet Secretary for Health. - Goods, inputs and raw materials imported 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 ten billion shillings, subject to approval of the Cabinet Secretary for the National Treasury on recommendation of the Cabinet Secretary for health.	• This amendment is aimed at encouraging investment in human vaccine manufacturing plants in a bid to reduce the cost of health care. • Manufacturers of human vaccines will be expected to enter into a special operating framework with the Kenyan Government and secure exemption approval in order to benefit from the IDF and RDL exemption.

Dropped

The following proposal contained in the Finance Bill, 2022 was omitted in the Finance Act

#	Proposal	Details
1.	Reduction of export levy on raw hides and skin	• The proposal to reduce export levy on raw hides and skins from 80% or USD 0.52 per Kg to 50% or USD 0.32 per Kg was omitted in the Finance Act.

Tax Administration

Enacted

#	Enacted change	Details	Our comments
1.	Refund or offset of overpaid tax	• The Act has overhauled section 47 of the Tax Procedures Act, 2015 (TPA). In addition to refund of overpaid tax, Section 47 now also provides for utilization of overpaid tax to offset a tax liability. • The new Section 47 further provides that upon receipt of an application for refund or set-off, the Commissioner must make a determination regarding whether to approve or reject it within ninety (90) days. The refund shall be deemed to be approved if the Commissioner fails to determine the refund application within the 90 days period. • Where the Commissioner approves a refund of cash, the same must be paid within two years from the date of the application, failure which, the Commissioner shall pay interest at 1% per month or part thereof until the date it is refunded to the taxpayer. • The new section also requires the Commissioner to apply any overpaid instalment tax to offset the taxpayer's future tax liability. • Any taxpayer aggrieved by the Commissioner’s decision with respect to this section can appeal to the Tax Appeals Tribunal (“TAT”) within thirty (30) days of the date of the decision.	• The changes in Section 47 provide clarity on the utilization of tax overpayments and minimizes uncertainty and disputes on this area. • Taxpayers now have the choice for claiming a cash refund, or to utilize overpaid tax against future tax liabilities. • The offset of overpaid instalment tax is a good move, which we are hopeful, KRA will provide a mechanism to have the automatic utilization of the overpayments in tax returns.
2.	Refund of tax paid in error	• The Act has introduced Sections 47A and 47B to govern the refund of tax paid in error. A taxpayer will be required to apply for refund of tax paid in error to the Commissioner before it is refunded or utilized to set-off a tax liability. Refunds of tax paid in error shall be governed by the same rules proposed to govern refunds of overpaid tax.	• The introduction of provisions that deal with tax paid in error is welcome, as these provisions did not exist, save for VAT paid in error.

Enacted

#	Enacted change	Details	Our comments
3.	Objection decision to be issued within 60 days	• The Act has amended Section 51 of the TPA, which governs objections to tax decisions, by introducing the following changes: - Increasing the timeframe within which the Commissioner should notify a taxpayer about the (in)validity of their objection from immediate to two weeks; - Introducing a time-limit of 14 days within which the Commissioner would be required to consider and communicate a decision on an application for extension of time to lodge an objection; and - Deleting the provision that allowed the Commissioner to issue an objection decision within 60 days from date of receipt of the notice of objection or any further information requested by the Commissioner and introducing a provision that requires the Commissioner to issue a decision within 60 days from the date of receipt of a valid notice of objection, failure of which the objection shall be deemed to be allowed. Request for additional information from KRA after filing the notice of objection shall not change the timeframe within which the decision should be issued.	• The amendment is a welcome move as it will cure the ambiguities inherent in the provisions governing objections and decisions made thereunder by the Commissioner.
4.	KRA to block the disposal of registrable assets that may be used as security for unpaid taxes	• The KRA has been empowered to block the sale of ships, aircrafts, motor vehicles and any other registrable assets that can be used as security/ collateral for unpaid taxes. Previously, this provision only applied to land. If a taxpayer does not settle the tax arrears within 2 months of receiving the notification blocking the sale, the Commissioner may, at the taxpayer’s expense, dispose the property to recover the tax.	• The intention of this amendment is to secure unpaid tax revenue due from taxpayers who may have assets other than land, which the Commissioner can put a caveat or restriction to prevent transfer. Additional provisions may need to be introduced to prevent the Commissioner from abusing this power, especially where tax is still in dispute.

Enacted

#	Enacted change	Details	Our comments
5.	A tax PIN required to register a Trust	• The Act has amended the TPA to include the registration of a trust among the transactions for which a Personal Identification Number (PIN) is required. • The Act has also amended Section 9 of the TPA to require trusts, whether carrying out business or not, to notify the Commissioner of any change to the trust affecting the full identity and address of the trustees and beneficiaries of the trust within 30 days of such a change.	• The changes imply that any person who intends to set up a trust in Kenya should have a tax PIN. • Further, all trusts, regardless of whether they have been established with the explicit purpose of carrying out business in Kenya (that is, a for-profit objective) or not, shall be required to furnish the Commissioner with updated details of their trustees and beneficiaries. • These amendments reflect the intent of the KRA to continuously monitor the activities of trusts, in light of the tax risks they present. This is also in line with the drive for transparency following the changes in the Companies Act 2015, requiring disclosure of beneficial interest. Hitherto, details of trustees and ultimate beneficiaries, were characterized by high levels of confidentiality, making them high-risk vehicles for tax-related risks such as tax evasion.

Enacted

#	Enacted change	Details	Our comments
6.	Agency notices	• The Act has amended Section 42 of the TPA, which deals with agency notices, as follows: - Increasing the period from 7 days to 14 days within which a person who fails to comply with an agency notice due to lack of monies held on behalf of, or due to, the taxpayer, should notify KRA of the inability to comply; - Introducing a provision that requires the Commissioner to serve the taxpayer a copy of the agency notice when the notice is served on a person/ agent, as the provision that existed did not stipulate when the copy should be served; and - Introducing a provision that bars the Commissioner from issuing an agency notice unless the Commissioner has confirmed its assessment through an Objection Decision and the taxpayer has defaulted to appeal to the Tax Appeals Tribunal within the prescribed timelines.	• These amendments are welcome, as they provide some favorable provisions to taxpayers and persons who are served with agency notices.

Dropped

The following proposal contained in the Finance Bill, 2022 was omitted in the Finance Act

#	Proposal	Details	Our comments
1.	Taxpayers to deposit 50% of the disputed tax prior to appealing a TAT decision	• The Finance Bill had proposed an amendment in the Tax Appeals Tribunal Act that would have required taxpayers aggrieved by a decision of the Tax Appeals Tribunal (TAT) to deposit 50% of the disputed tax in a special account at the Central Bank of Kenya ("CBK") before filing the appeal at the High Court.	• This proposal was rejected after due consideration was given to the proposal's potential negative effects on taxpayers' cashflows, as well as the potential infringements to taxpayers' rights to fair administration action and access to justice in line with Articles 47 and 48 of the Constitution of Kenya, 2010.

Other Measures

Enacted

In addition to the tax measures, the Act has also introduced the following changes. All the changes in this section take effect on 1 July 2022.

#	Legislation	Enacted change
1.	The Evidence Act (Cap 80)	• The Act has amended section 133 of the Evidence Act to extend the protection offered to magistrates, judges, police and revenue officers against disclosing their sources for offences committed in relation to the public revenue, particularly as provided in the revenue administration laws specified in the First Schedule to the Kenya Revenue Authority Act, 1995. • Previously, the privilege of not disclosing sources only covered offences in relation to income tax, customs and excise. • This is a welcome move as it is geared toward encouraging reporting and prosecution of offences relating to all public revenue laws provided in the First Schedule to the Kenya revenue Authority Act, 2015, including the Value Added Tax Act, Tax Procedures Act, Traffic Act, Stamp Duty Act etc.
2.	Capital Markets Act (Cap 485A)	• The Act has amended section 2 of the Capital Markets Act on the definition of "Investment Advisor" by deleting subparagraph 3. The subparagraph restricted the total value of the portfolio that could be managed by investment advisors to that prescribed by the Capital Markets Authority from time to time. This amendment is aimed at eliminating the restriction of the value of portfolio that could be managed by investment advisors. • The Act has also amended section 29 (1) (a) and expanded the scope of persons who may be licensed by the Capital Markets Authority to include any legal entity that may be prescribed in the regulations. This change expands the scope of persons who could be licensed beyond companies and collective investment schemes. • In addition, the Act has amended section 29 (1) (c) by deleting the provision that required a business seeking licensing to have at least one director and at least one employee who is the chief executive of the applicant company to have satisfied the minimum qualification requirements. In its place, the Act has introduced a provision that requires at least the director, chief executive officer or such other person who directs, conducts, manages or supervises the business to have satisfied the minimum qualification requirements.

Enacted

#	Legislation	Enacted change
3.	Unclaimed Financial Assets Act	• The Act has introduced the following changes to the Unclaimed Financial Assets Act: - Amending section 33 by providing that the penalties payable under subsections 1, 4 and 5 shall be recoverable as civil debts summarily and shall be capped to the value of the assets found to be reportable and deliverable; - Introducing a new section (section 33A) that provides for waiver of penalties, fines and audit fees 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; and - Introducing a new section (section 33B) that provides for a Voluntary Unclaimed Financial Assets Disclosure Programme (VUFADP). The Programme shall run for 12 months and shall grant relief on penalties and interest relating to unclaimed assets where the holder discloses, reports or delivers the assets to the Authority in accordance with the section. Only assets held up to the 30th June 2022 shall be covered by the programme.
4.	Stamp Duty Act	• The Act has amended Section 117 of the Stamp Duty Act to include *“an instrument executed in favour of a mortgage refinance company”* in the list of instruments exempt from stamp duty. • This amendment is aimed at encouraging lenders to refinance their mortgages with the Kenya Mortgage Refinance Company or any other mortgage refinance company to make more money available for onward lending to eligible homeowners.

Enacted

#	Legislation	Enacted change
5.	Betting, Lotteries and Gaming Act	• The Act has amended the Betting, Lotteries and Gaming Act and excluded horse racing from the betting tax charged under Section 29A of the Betting, Lotteries and Gaming Act.
6.	Statutory Instruments Act	• The Act amends Section 15 of the Statutory Instruments Act by introducing subsection 4, which provides an exception to section 12 for any statutory instrument which contains provisions dealing with taxes, levies or fees, or has the effect of imposition of a charge on a public fund or variation or repeal of such charge to be approved or rejected by the National Assembly within 28 sitting days from the date of receipt of the notice under section 11." Section 12 requires every instrument tabled in Parliament to be referred to the Committee or any other committee that may be established for the purpose of reviewing and scrutinizing statutory instruments. • The Act also amends Section 21 of the Statutory Instruments Act to exempt statutory instruments issued under the Income Tax Act, Stamp Duty Act, Value Added Tax Act, 2013, Tax Appeals Tribunal Act, 2013, Excise Duty Act 2015, and Tax Procedures Act, 2015 from the automatic revocation after the lapse of 10 years from the date the statutory instrument was created. Statutory instruments created pursuant to all other Acts shall continue to expire on the earlier of: a) 10 years from the date the instrument is created b) The date the instrument is repealed c) The date the instrument expires • This is a welcome move as it will provide certainty in the regulations governing tax administration, which is one of the key canons of taxation. Further, it protects revenue collection and mobilization by cushioning such regulations from automatic expiry.

Enacted

#	Legislation	Enacted change
7.	Kenya Roads Board Act	• The Act amends Section 2 of the Kenya Roads Boards Act in the definition of "Fund" by deleting the expression "section 30" and substituting therefor the expression "section 31". The term "Fund" is defined in Section 2 of the Kenya Roads Boards Act as *"the Kenya Roads Board Fund established by section 30."* Reference to Section 30 is erroneous, as the Kenya Roads Board Fund is established under Section 31. The amendment is therefore aimed at correcting the mistake. • Section 6 of the Kenya Road Boards Act, which stipulates the object and purpose of the board, has also been amended to provide that the board shall; manage the fund and allocate monies from the Fund in the following manner: a) fifty per cent of the Fund shall be allocated in accordance with paragraph (d)(the maintenance, rehabilitation and development of the road network); and b) fifty per cent of the Fund shall be allocated for the purposes of section 32A (2)(funds to secure additional funding. • The amendment to Section 6 guides the Roads Board on the allocation of allocated funds. • In addition, the Act has also amended the Kenya Roads Board Act to replace any mention of "monies from the fuel levy" with "allocated funds". This amendment expands the scope of the funds managed by the Kenya Roads Board beyond those generated from the fuel levy.
8.	Roads Maintenance Levy Fund Act	• The Finance Act has introduced an amendment in Section 3(2) of the Roads Maintenance Levy Fund Act, which restricts the purpose for which the KES 3 per liter of petroleum sold paid into the Road Annuity Fund established under the Public Finance Management Act, 2012 shall be used. The amendment provides that the amount shall be used to fund the construction of roads under the Road Annuity Programme and similar roads approved by the National Assembly.

Enacted

#	Legislation	Enacted change
9.	Retirement Benefits (Deputy President and Designated State Officers) Act, 2015	• The Finance Act has amended Section 13 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 to provide guidelines on the administration of retirement benefits for retired Deputy Presidents, Prime Ministers, Vice-Presidents, Speakers of the National Assembly or the Senate, Chief Justices and Deputy Chief Justices. The benefits covered under Act shall be administered as follows: - In the case of a retired Deputy President, retired Prime Minister or retired Vice-President, the benefits shall be administered by the Office of the President, and shall be provided for in the estimates of the national government referred to in Article 221(1) of the Constitution; - In the case of a retired Speaker of the National Assembly or the Senate, the benefits shall be administered by the Parliamentary Service Commission and shall be provided for in the estimates of the parliamentary service prepared pursuant to Article 127(6)(c) of the Constitution; and - In the case of a retired Chief Justice or retired Deputy Chief Justice, the benefits shall be administered by the Judicial Service Commission and shall be provided for in the estimates of the Judiciary prepared pursuant to Article 173(3) of the Constitution. • The Act has further introduced a provision that will require the Office of the President, the Parliamentary Service Commission and the Judicial Service Commission to formulate administrative guidelines for the administration of the benefits including on matters relating to the computation of benefits due to an entitled person under section 13. • The amendments to Section 13 decentralizes the administration of retirement benefits payable to the retired state officers mentioned above from the National Treasury.

Enacted

#	Legislation	Enacted change
10.	Insurance Act	• The Act amends Section 10 of the Insurance Act by replacing the expression "section 21" appearing in subsection 4 and 8 with the expression "section 21A". • Subsection 4 provides that *"an insurer who, upon an investigation ordered under subsection (3)(a) is found to have disposed of any assets from a closed fund contrary to the provisions of section 21, or to have misappropriated such assets, commits an offence and is liable on conviction, to a fine not exceeding one hundred thousand shillings or, where the insurer is a natural person to imprisonment for a term not exceeding five years, or to both."* • On the other hand, subsection 8 provides that *"In this section the expression "closed fund" means a closed fund within the meaning of section 21."* • Section 21 was repealed by the Companies and Insolvency Legislation (Consequential Amendments) Act, 2015 (No 19 of 2015) and Section 21A was introduced by the Finance Act, 2021 (No 8 of 2021). • The amendments to replace the expression "section 21" appearing in Section 10(4) and (8) of the Insurance Act with the expression "section 21A" are therefore aimed at correcting errors that arose following the deletion of Section 21 in 2015.

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