



# TAX ALERT

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Analysis of the Finance Act, 2022

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## *Introduction*

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The Finance Act was signed on 21<sup>st</sup> June 2022, after members of parliament made amendments to the Bill that was tabled on 12<sup>th</sup> April 2022. Some of the proposals were shot down, for example the move to have taxpayers deposit 50% of tax in dispute to the CBK account upon filing an Appeal at the High Court has been rejected. VAT on liquid petroleum gases has also been reduced to 8% to ease the financial burden on the ordinary Kenyan.

The amendments to tax affect the various tax laws, including Income Tax Act, Value Added Tax (VAT) Act, 2013, the Excise Duty Act and the Tax Procedures Act, 2015.

In this alert we highlight the major changes introduced by the Finance Act, 2022.

## ***Key Areas Covered***

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1. Income Tax Act
2. Value Added Tax Act, 2013
3. Excise Duty Act
4. Tax Procedures Act, 2015
5. Other Miscellaneous Amendments



# Income Tax Act

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# Income Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Income Tax Act:			
Taxation of Financial Derivatives	There were no provisions governing the taxation of Financial Derivatives.	<p>The Act has introduced a provision which brings to tax gains or profits derived by non-resident persons from financial derivatives. The Commissioner will periodically publish regulations governing the taxation of such derivatives.</p> <p>A 'Financial Derivative' is defined in the Act as a financial instrument the value of which is linked to the value of another instrument underlying the transaction which is to be settled at a future date.</p>	<p>This is an effort to expand the tax base to boost revenue collections, where the Government aims to tax gains accruing from financial derivatives at a rate of 15%, except for gains resulting from trading at the Nairobi Securities Exchange</p> <p><i>(Eff: 1<sup>st</sup> January 2023)</i></p>
Deductibility of Foreign Exchange Losses	The Income Tax Act limited claimable foreign exchange losses realized by entities to the extent that the loan(s) are advanced by a person who is in control of the entity either alone or together with four or fewer persons, the sum of which exceeds three times the entity's capital and revenue reserves.	<p>The Act has aligned the provision on claimable forex losses in line with the provisions introduced in the Finance Act of 2021 on interest expenses restriction. Foreign exchange losses realized by a company can only be deferred or deducted when the interest does not exceed 30% of the EBITDA (Earnings Before Interest, Tax, Depreciation and Amortization).</p>	<p>This is aimed at bringing uniformity to the recently introduced thin capitalization rules in the Finance Act, 2021.</p> <p><i>(Eff: 1<sup>st</sup> July 2022)</i></p>

# Income Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Income Tax Act (cont'd):			
Digital Services Tax (DST)	Payable by Non-Resident Persons	The Act has amended the provision to exclude Non-Resident persons with a Permanent Establishment in Kenya from DST.	This is aimed at excluding entities with a 'P.E.' in Kenya from DST as they already remit taxes similar to resident persons.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Exclusion from EBITDA-based Interest Restriction rule	The ITA previously excluded banks or financial institutions licensed under the Banking Act and MSMEs from the interest restriction rule of limiting deduction of Interest expense to a maximum of 30% of the Earnings Before Interest, Tax, Depreciation and Amortisation.	The Act has expanded this provision to further exclude the following : A. Microfinance institutions licensed and non-deposit taking microfinance businesses under the Microfinance Act, 2006; B. Entities licensed under the Hire Purchase Act C. Non-deposit taking institutions involved in lending and leasing business Companies undertaking the manufacture of human vaccines D. Companies engaged in manufacturing whose cumulative investment in the preceding five years from 1 July 2022 is at least KShs. 5 Billion E. Companies engaged in	The amendment attempts to bring equity to the taxation of similar entities. It is also a reprieve to entities whose business model is heavily affected by debt financing, whereby these provisions would otherwise have adversely affected such entities.  <i>(Eff: 1<sup>st</sup> July 2022)</i>

# Income Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Income Tax Act (cont'd):			
Exclusion from EBITDA-based Interest Restriction rule (cont'd)		<p>manufacturing whose cumulative investment is at least KShs. 5 Billion</p> <p>Provided that the investment shall have been made outside Nairobi City County and Mombasa County;</p> <p>F. Holding companies that are regulated under the Capital Markets Act</p>	(Eff: 1 <sup>st</sup> July 2022)
Expansion of the scope of gains or profits of businesses in a Preferential Tax Regime (PTR)	Where a resident entity operating in a PTR carried on business with a related resident entity not operating in a PTR, leading to little or no gains or profits to the latter had there been no such relationship, the gains or profits of that resident person from that business were deemed to be the amount that was expected to accrue if the business had been conducted by independent persons dealing at arm's length	<p>The Act has increased the scope to include transactions in which a resident person carries on a business with:</p> <p>A. A non-resident person located in a preferential tax regime;</p> <p>B. An associated enterprise of a non-resident person in a preferential tax regime;</p> <p>C. A permanent establishment of a non-resident person operating in Kenya where the non-resident person is located in a preferential tax regime</p>	<p>The proposal aims to widen the scope of transactions falling within the scope of preferential tax regime.</p> <p>(Eff: 1<sup>st</sup> January 2023)</p>

# Income Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Income Tax Act (cont'd):			
Definition of a Preferential Tax Regime	Previously defined as 'any legislation, regulation or administrative practice which provides a preferential rate of taxation to such income or profit, including reductions in the tax rate or the tax base'	<p>The Act has amended this definition to include:</p> <ul style="list-style-type: none"> <li>A. any Kenyan legislation, regulation or administrative practice which provides a preferential rate of tax to such income or profit, including reductions in the tax rate or the tax base;</li> <li>B. a foreign jurisdiction which—               <ul style="list-style-type: none"> <li>(i) does not tax income;</li> <li>(ii) taxes income at a rate that is less than 20%;</li> <li>(iii) does not have a framework for the exchange of information;</li> <li>(iv) does not allow access to banking information;</li> <li>(v) lacks transparency on corporate structure, ownership of legal entities located therein, beneficial owners of income or capital, financial disclosure, or regulatory supervision.</li> </ul> </li> </ul>	<p>The amendment to the definition of, and what constitutes, a Preferential Tax Regime will impact a number of companies especially those dealing with foreign entities with lower corporation tax rates (e.g. Qatar, Switzerland, UK and Mauritius).</p> <p>However, the emphasis on non-related entities may be detrimental to local companies as it is not clear whether they will be required to have a Transfer Pricing policy to justify arms-length transactions with third parties.</p> <p style="text-align: right;"><i>(Eff: 1<sup>st</sup> January 2023)</i></p>

# Income Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Income Tax Act (cont'd):			
Multinational Enterprise Group reporting (CbCR) and Notification to the Commissioner	Previously, group reporting was only limited to Ultimate Parent Entity (UPE) of a multi-national enterprises group (MNEG) that is resident in Kenya to submit annual prescribed returns to the Commissioner detailing the group's financial activities in Kenya and in other jurisdictions where the group has a taxable presence.	The Act has expanded the scope of this provision to require MNEGs, to notify the Commissioner, in a prescribed form, not later than the last day of the reporting financial year of that group: <ul style="list-style-type: none"> <li>A. whether or not it is the UPE of the group;</li> <li>B. whether or not it is a Surrogate Entity of the group;</li> <li>C. in case paragraphs A and B do not apply, the identity of the constituent entity which is the UPE or Surrogate Parent Entity and the tax residence of that constituent entity.</li> </ul>	This amendment expounds the earlier provisions introduced by the Finance Act, 2021 on Country by Country Reporting. Previously, only MNEGs with Ultimate Parent Entities that were Resident in Kenya were allowed to submit the annual returns as required by the Commissioner. The new provision has now included entities that are not Resident to submit the CbCR reports. <p style="text-align: right;"><i>(Eff: 1<sup>st</sup> July 2022)</i></p>
Donations to charitable organizations	Deduction of donations as an expense was limited to 'cash' donations made to organizations registered under the Societies Act or NGO Co-ordination Act, and whose income is exempt under Paragraph 10 of the First Schedule to the Act	The Act has amended this provision to include any donation to a charitable organization whose income is exempt from tax under paragraph 10 of the First Schedule or to any project approved by the Cabinet Secretary responsible for matters relating to finance	This is a welcome move as it allows deductibility of donations to tax exempt organizations, irrespective of the laws under which they are registered, which will hopefully encourage support to such charitable organisations. <p style="text-align: right;"><i>(Eff: 1<sup>st</sup> July 2022)</i></p>

## Income Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Income Tax Act (cont'd):			
Requirements to file CbCR reports for MNEGs with a gross turnover of KShs. 95 Billion	The provision was limited to Ultimate Parent Entities that were resident in Kenya.	<p>An Ultimate Parent Entity (UPE) or a constituent entity of an MNEG with a gross turnover of KShs. 95 Billion (including extraordinary or investment income) that is resident in Kenya shall file a CbCR report of its financial activities in Kenya and for all other jurisdictions where the group has a taxable presence.</p> <p>The CbCR report is to be filed within 12 months after the last day of the reporting financial year of the Multi-national Enterprises Group (MNEG).</p> <p>The UPE is also required to submit a master file and a local file, not later than 6 months after the last day of the reporting financial year of the MNEG.</p> <p>A master file contains standard information relevant for the government to understand the global operations of the MNEG.</p> <p>A local file contains information on material transactions of the local taxpayer.</p>	<p>These measures are in line with the Government's effort to align itself with the provisions of BEPS (Base Erosion and Profit Shifting) under the OECD.</p> <p>The new requirements also present an additional cost of compliance to the affected taxpayers.</p> <p style="text-align: right;"><i>(Eff: 1<sup>st</sup> July 2022)</i></p>

# Income Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Income Tax Act (cont'd):			
Capital Gains Tax	Tax rate was at 5% on the gains.	<p>Tax rate increased to 15% of the gains.</p> <p>For companies that are certified by the Nairobi Financial Center Authority, the applicable rate shall be the rate that was prevailing at the time the investment was made provided that before 1<sup>st</sup> January 2023, the:</p> <p>A. Firm invests KShs 5B in Kenya. B. Transfer of such investment is made after 5 years.</p>	<p>The Government seeks to raise additional revenue on transfers.</p> <p>However, we note that there are no provisions as to indexation allowance which would address inflationary concerns.</p> <p><i>(Eff: 1<sup>st</sup> January 2023)</i></p>
Definition of 'manufacture'	The definition included the generation of electrical energy for supply to the national grid.	The proviso in Paragraph 1 of the Second Schedule to the ITA has deleted the words 'for supply to the national grid'	<p>This is a welcome move as off-grid suppliers of electricity will qualify for investment deduction.</p> <p><i>(Eff: 1<sup>st</sup> July 2022)</i></p>
Special Corporation Tax rates for shipping companies and companies dealing in carbon	Corporation Tax rate was at 30%	<p>For shipping companies, and companies operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority;</p> <p>Corporation Tax rate is at 15% for the first 10 years from the year of commencement of operations.</p>	<p>This is aimed at encouraging companies in the shipping business to set up shop in Kenya.</p> <p>Additionally, it also encourages the establishment of firms dealing in emissions trading for the purposes of allowing other companies and bodies to buy emissions allowances, as an effort by the Government to limit the release of greenhouse gases.</p> <p><i>(Eff: 1<sup>st</sup> July 2022)</i></p>

## Income Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Income Tax Act (cont'd):			
Investment Deduction Allowance	IDA at 100% only allowed on investments whose value was KShs. 2 Billion on or before 25 <sup>th</sup> April 2020.	The Act has further enhanced the contents in the proviso to include investments where the cumulative investment value is at least KShs. 2 Billion for the preceding 4 years from 1 <sup>st</sup> July 2022 or for the succeeding three years outside Nairobi City County or Mombasa County.	This is to clarify the provisions set out for the claiming of Investment Allowances, and to encourage the development of industries outside the major cities of Nairobi and Mombasa.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
	Investment Deduction allowed at 150% until the end of 31 <sup>st</sup> December 2022 for capital expenditure of at least KShs. 5 Billion incurred on the construction of bulk storage and handling facilities for supporting the operations of the Standard Gauge Railway.	The Act has extended the period of validity of claiming the deduction until 31 <sup>st</sup> December 2023.	This is a welcome move as it allows more time for the affected entities to claim Investment Deduction and to effectively reduce their tax liability.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Exempt Income	N/A	The Act has introduced exemption from income tax for the following:  A. Deemed interest in respect of an interest free loan advanced to a company undertaking the manufacture of human vaccines.	The First Schedule of the ITA has been amended by exempting additional classes of income from corporation tax.  <i>(Eff: 1<sup>st</sup> July 2022)</i>

## Income Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Income Tax Act (cont'd):			
Exempt Income (cont'd)		<p>B. Payments made to non-resident service providers not having a PE in Kenya in respect of services provided to a company undertaking the manufacture of human vaccines.</p> <p>C. Compensating tax accruing to a company undertaking the manufacture of human vaccines.</p> <p>D. Dividends paid by a company undertaking the manufacture of human vaccines to any non-resident person.</p> <p>E. Income of a company undertaking the manufacture of human vaccines.</p> <p>F. Dividends paid by SEZ enterprises, developers and operators licensed under the Special Economic Zones Act.</p>	<p>This is also a move by the Government to encourage companies that deal in the manufacture of vaccines and in the SEZ to set-up shop in Kenya.</p> <p><i>(Eff: 1<sup>st</sup> July 2022)</i></p>

## Income Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Income Tax Act (cont'd):			
Withholding Tax Rate (on bearer bonds of at least 2 years issued outside Kenya)	15%	7.5%	The Third Schedule is amended to include WHT at 7.5% in respect of Interest and Deemed Interest arising from bearer bonds issued outside Kenya of at least two years duration, and interest, discount or original issue discount to encourage foreign funding.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Expansion of the definition of 'Permanent Home'	There was no specific definition in the ITA.	The Act has introduced the definition of 'permanent home' to include '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'.	This definition is aimed at bringing clarity when determining tax residency of individual taxpayers. The Commissioner still needs to clarify what is meant by interests being 'closest' as it may bring ambiguity and difficult when considering tax compliance of individual taxpayers.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Expansion of the definition of 'fair market value'	There was no specific definition in the ITA.	The Act has introduced the definition of 'fair market value' to mean the comparable market price available in an open and unrestricted market between independent parties acting at arm's length and under no compulsion to transact, which is expressed in terms of money or money's worth.	This definition is aimed at bringing clarity when determining the accurate calculation of tax by citizens living abroad, and also to harmonize the definitions stated in other tax laws.  <i>(Eff: 1<sup>st</sup> July 2022)</i>

## Income Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Income Tax Act (cont'd):			
Employee Share Ownership Plans (ESOPs)	<p>In the case of Registered Plans, the value of the benefit shall be the difference between the market value per share and the offer price per share, at the date the option is granted by the employer.</p> <p>In the case of Unregistered Plans, the value of the benefit shall be the higher of the cost to the employer and the fair market value of the benefit.</p>	Value of the benefit shall be the difference between the offer price per share at the date the option is granted by the employer, and the market value per share on the date when the employee exercises the option.	<p>We note that the Act has not separated the provisions for Registered and Unregistered share ownership plans, and therefore treats the two such entities as equals in determining the tax point for the ESOP benefits.</p> <p><i>(Eff: 1<sup>st</sup> July 2022)</i></p>
Insurance Relief	The tax provisions referred to the resident taxpayer using the terms 'he', 'his', 'him' and 'wife'	The Act has replaced the words with 'the individual', 'the individual's' and 'spouse'.	<p>This is aimed at promoting diversity by incorporating gender inclusive pronouns in the interpretation of the law.</p> <p><i>(Eff: 1<sup>st</sup> July 2022)</i></p>
Pay As You Earn (PAYE) Penalties	The Commissioner was granted powers under Section 37 (3) of the ITA to remit in whole or in part a penalty imposed on employers who fail to deduct tax or account for tax deducted on their employees' emoluments.	The Act has deleted this provision.	<p>This is aimed at aligning the penalty provisions with the Tax Procedures Act, 2015.</p> <p><i>(Eff: 1<sup>st</sup> July 2022)</i></p>



# Value Added Tax Act

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## Value Added Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
<b>Value Added Tax Act:</b>			
Definition of 'digital marketplace'	"Digital marketplace" was defined as an online platform which enables users to sell or provide services, goods or other property to other users.	"Digital marketplace" is defined as an online platform which enables users to sell goods or provide services to other users.	This is aimed at bringing clarity to the supplies that are subject to digital services tax.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Exclusion of Digital Services from Reverse charge VAT	If a supply of imported taxable services is made to any person, the person shall be deemed to have made a taxable supply to himself. This also included supply of digital services.	The Act has exempted digital services in the determination of supply of imported taxable services from the ambit of reverse VAT	This will be a welcome move as entities dealing in supply of digital services will not be liable to account for Reverse charge VAT. However, to avoid confusion, there is need to align this provision with those of the Value Added Tax (Digital Marketplace Supply) Regulations, 2020.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Threshold for VAT Registration for Digital Services	Entities were only required to account for VAT on supplies of Digital Services if their annual turnover exceeded KShs. 5 Million	The Act has repealed this provision, to require all suppliers of imported digital services to register for VAT regardless of their annual turnover.	This is aimed at increasing revenue from transactions conducted over a digital marketplace.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Refund of excess Input Tax	Previously, manufacturers could only claim input tax to offset the VAT liabilities relating to taxable supplies made to an official aid-funded project.	The Act has introduced a new provision allowing such suppliers to apply for refund of excess input tax arising from such supplies; provided that the input tax credits accumulated between 24 <sup>th</sup> December 2020 and 1 <sup>st</sup> July 2022, and the application is made within a period of twelve months.	This is aimed at providing clarity and extending incentives to manufacturers who supply to official aid-funded projects. It also clears the gap that was brought about by the Tax Laws (Amendment) Act, II of 2020 on the claimability of input tax by such manufacturers.  <i>(Eff: 1<sup>st</sup> July 2022)</i>

## Value Added Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Value Added Tax Act:			
Deduction of Input Tax	Input Tax was claimable by a registered person whether or not a VAT return was submitted within the six months.	Input Tax will not be allowed unless it was declared in a VAT return within six months.  The Commissioner may also request additional supporting documents at his discretion.	This is to remedy a previous gap in law where disputes arose with regard to claiming of input VAT.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
	The documentation required for deduction by oil marketers who participate in the Open Tender System were the same as for all other registered entities.	In addition to the scope of documentation required under Section 17(1), participants in the Open Tender System that have been cleared through a non-bonded facility will be required to have the custom entry showing the name and PIN of the winner of the tender and the name of the other oil marketing company participating in the tender.	This is to provide clarity to the claiming of input tax by oil marketers for imported petroleum products cleared through a non-bonded facility.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Refund of Tax Paid in Error	The Commissioner refunded such an amount provided that the application is made within 12 months from the due date	The Act has repealed this section. Refund on Tax paid in error will now be governed by the TPA.	This is to align with the newly introduced Section 47A of the Tax Procedures Act, 2015 relating to refund of tax paid in error.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Penalties and Interest on Importation of taxable supplies	The imposition of penalties and interest was subject to the EACCMA Act.	The imposition of penalties and interest is subject to the provisions of the Tax Procedures Act, 2015.	This amendment also caters for the <i>in duplum</i> rule governing interest payable.  <i>(Eff: 1<sup>st</sup> July 2022)</i>

## Value Added Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Value Tax Act (cont'd):			
Change of VAT Status	Zero-Rated	Taxable at 16%	<ul style="list-style-type: none"> <li>• <b>Supply of protective apparel, clothing accessories and equipment</b> <i>(Eff: 1<sup>st</sup> July 2022)</i></li> </ul>
	Exempt	Zero-Rated	<ul style="list-style-type: none"> <li>• <b>Fertilizers of Chapter 31</b></li> <li>• <b>The exportation of taxable services in respect of business process outsourcing</b></li> </ul> <p>Zero-rating is limited to export of business process outsourcing services, which is detrimental as it will only benefit companies registered to exclusively offer Business Process Outsourcing (BPO) Services. <i>(Eff: 1<sup>st</sup> July 2022)</i></p>
			<ul style="list-style-type: none"> <li>• <b>Inputs or raw materials locally purchased or imported by manufacturers of fertilizer</b></li> </ul> <p>The zero-rating will apply from time to time as approved by the Cabinet Secretary of Agriculture. <i>(Eff: 1<sup>st</sup> July 2022)</i></p>
	Exempt	Taxable at 16%	<ul style="list-style-type: none"> <li>• <b>Exportation of Taxable Services</b></li> </ul> <p>The Finance Act 2021 amended the VAT status of Exported services to Exempt. This new amendment would mean that such supplies will be subject to VAT, increasing the Government's revenue but may also have a direct negative impact on such exporters. <i>(Eff: 1<sup>st</sup> July 2022)</i></p>

## Value Added Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Value Tax Act (cont'd):			
Change of VAT Status	Exempt	Taxable at 16%	<ul style="list-style-type: none"> <li>• <b>Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty</b></li> </ul> <p style="text-align: right;"><i>(Eff: 1<sup>st</sup> July 2022)</i></p>
	Taxable at 16%	Taxable at 8%	<ul style="list-style-type: none"> <li>• <b>The supply of liquefied petroleum gas including propane</b></li> </ul> <p>This is a welcome move as it will aim at cushioning Kenyans against the rising costs of gas.</p> <p style="text-align: right;"><i>(Eff: 1<sup>st</sup> July 2022)</i></p>
	Taxable at 16%	Taxable at 0%	<ul style="list-style-type: none"> <li>• <b>Inputs or raw materials locally purchased or imported by manufacturers of fertilizer (as approved from time to time by the Cabinet Secretary responsible for Agriculture)</b></li> </ul> <p style="text-align: right;"><i>(Eff: 1<sup>st</sup> July 2022)</i></p>
	Taxable at 16%	Exempt	<ul style="list-style-type: none"> <li>• <b>Plant and machinery of chapter 84 and 85 imported by manufacturers of pharmaceutical products or investors in the manufacture of pharmaceutical products upon the recommendation of the Cabinet Secretary responsible for matters relating health.</b></li> </ul> <p style="text-align: right;"><i>(Eff: 1<sup>st</sup> July 2022)</i></p>

## Value Added Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Value Tax Act (cont'd):			
Change of VAT Status	Taxable at 16%	Exempt	<ul style="list-style-type: none"> <li>• <b>Medical oxygen supplied to registered hospitals</b></li> <li>• <b>Urine bags, adult diapers, artificial breasts, colostomy or ileostomy bags for medical use.</b></li> <li>• <b>Inputs and raw materials used in the manufacture of passenger motor vehicles</b></li> <li>• <b>Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel)</b></li> <li>• <b>Taxable goods, inputs and raw materials imported or locally purchased by a company which is-</b> <ul style="list-style-type: none"> <li><b>(a) engaged in business under a special operating framework arrangement with the Government; and</b></li> <li><b>(b) incorporated for purposes of undertaking manufacture of human vaccines; and whose capital investment is at least KShs. 10 Billion, subject to approval of the Cabinet Secretary of the National Treasury, on recommendation of Cabinet Secretary for health.</b></li> </ul> </li> </ul> <p style="text-align: right;"><i>(Eff: 1<sup>st</sup> July 2022)</i></p>

## Value Added Tax Act

Provision	Previous Position	Amended Position	Impact / Comment
Value Tax Act (cont'd):			
Change of VAT Status	Taxable at 16%	Exempt	<ul style="list-style-type: none"> <li>• <b>Locally Manufactured passenger motor vehicles</b>  “locally manufactured passenger motor vehicle” means a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose ex-factory value comprises at least 30% of local content;  “<b>local content</b>” means parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.</li> <li>• <b>Sustainable fuel pellets for household and commercial use</b></li> <li>• <b>Approved capital goods determined by the Cabinet Secretary to promote investment in the manufacturing sector (provided that the value of such investment is not less than KShs. 2 Billion)</b></li> </ul> <p>This is the Government’s bid to make the above supplies more affordable to Kenyans.</p> <p style="text-align: right;"><i>(Eff: 1<sup>st</sup> July 2022)</i></p>

A row of glass bottles in a factory setting, overlaid with a red tint and the text 'Excise Duty Act'.

# Excise Duty Act

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## Excise Duty Act

Provision	Previous Position	Amended Position	Impact / Comment
<b>Excise Duty Act:</b>			
Annual inflation adjustment	The Commissioner may, with the approval of the Cabinet Secretary, by notice in the Gazette, adjust the specific rate of excise duty once every year to take into account inflation.	The Act has introduced the following proviso: Provided that the Commissioner may, by notice in the Gazette and with the approval of the Cabinet Secretary, exempt specified products from inflation adjustment after considering the circumstances prevailing in the economy in that year in respect of such products.	This is a move by the Government to protect consumers from price increases due to annual inflation adjustments on Excise Duty charged on specific products.  <b>(Eff: 1<sup>st</sup> January 2023)</b>
Penalties and interest on unpaid refunds	Penalties charged at 5% and Interest charged at 2%	Penalties charged at 5% and interest charged at 1%. The provisions of the Tax Procedures Act on imposition of penalties and interest shall also apply.	This is aimed at harmonizing the provisions of the EDA to the provisions of Section 47 of the Tax Procedures Act on applicability of interest on unpaid refunds by the Commissioner. The interest and penalties will also be calculated using the <i>in duplum</i> rule.  <b>(Eff: 1<sup>st</sup> July 2022)</b>
Ex-factory selling price	Defined as “the price payable by the purchaser if the excisable goods are sold by the manufacturer, other than to a purchaser in an arm’s length transaction”	The Act has amended the provision by deleting the words “other than to a purchaser”	This is to bring more clarity to the definition of ‘ex-factory selling price’ for the purposes of calculating Excise Duty.  <b>(Eff: 1<sup>st</sup> July 2022)</b>

## Excise Duty Act

Provision	Previous Position	Amended Position	Impact / Comment
<b>Excise Duty Act (cont'd):</b>			
Excise Duty on Electronic cigarettes and cartridges for use in electronic cigarettes	Electronic Cigarettes: Kshs. 4,171.59 per unit  Cartridge for use in electronic cigarettes: KShs. 2,781.43 per unit	Items deleted. However, These will now be charged on percentage basis.	This amendment seeks to change the chargeability of Excise Duty on e-cigarettes and its related products.  <b>(Eff: 1<sup>st</sup> July 2022)</b>
Excise Duty increase on certain products	Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter: KShs. 12.17 per liter	Kshs. 13.30 per litre	These measures are aimed at increasing revenue for the Government.  The government also aims to increase 'sin tax' on products which are deemed to have potential harmful effects on the health of its citizens.  <b>(Eff: 1st July 2022)</b>
	Cosmetics and Beauty products of tariff headings 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%; KShs. 121.85 per litre	Kshs. 134 per litre	
	Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits; KShs. 208.20 per litre	Kshs. 229 per litre	

## Excise Duty Act

Provision	Previous Position	Amended Position	Impact / Comment
<b>Excise Duty Act (cont'd):</b>			
Excise Duty increase on certain products	Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%; KShs. 278.70 per litre	KShs. 335.30 per litre	<b>(Eff: 1<sup>st</sup> July 2022)</b>
	Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes; KShs. 13,906.04 per kg	KShs. 15,296.60 per kg	
	Cigarette with filters (Hinge lid and soft cap) ; KShs. 3,447.61 per mille	KShs. 3,825.99 per mille	
	Cigarette without filters (plain cigarettes); KShs. 2,502.74 per mille	KShs. 2,752.97 per mille	
	Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts & essences; KShs. 9,734.45 per kg	KShs. 10,707.88 per kg	
	Imported sugar confectionary of tariff heading 17.04; KShs. 36.74 per kg	KShs. 40.37 per kg	

## Excise Duty Act

Provision	Previous Position	Amended Position	Impact / Comment
<b>Excise Duty Act (cont'd):</b>			
Excise Duty increase on certain products	Imported white chocolate, chocolate in blocs, slabs or bars of tariff Nos.1806.31.00,1806.32.00,1806.90.00; KShs. 220.31 per kg	KShs. 242.29 per kg	<b>(Eff: 1<sup>st</sup> July 2022)</b>
	Jewellery of tariff heading 7113 and imported jewelry of tariff heading 7117; 10%	15%	
	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; KShs. 1,259.64 per kg	KShs. 1,500 per kg	
Excise Duty on Imported furniture of any kind used in offices, kitchen, bedroom and other furniture	25%	Item deleted	This is aimed at reducing the costs of imported furniture, making them more affordable.  <b>(Eff: 1<sup>st</sup> July 2022)</b>

## Excise Duty Act

Provision	Previous Position	Amended Position	Impact / Comment
<b>Excise Duty Act (cont'd):</b>			
Imposition of Excise Duty on certain products	Imported articles of plastic of tariff heading 3923.90.90; No Duty chargeable	10%	<p>This is a move by the Government to increase their revenue by imposing duty on the specified supplies.</p> <p>It will also be detrimental to Kenyans intending to purchase such supplies, for example the purchase of cellular phones. It will also likely affect the borrowing capabilities of Kenyans as mobile loans will effectively be less attractive due to the cost of servicing them.</p> <p style="text-align: right;"><b>(Eff: 1<sup>st</sup> July 2022)</b></p>
	Imported potatoes of tariff numbers 0710.10.00, 2004.10.00 and 2005.20.00; No Duty chargeable	25%	
	Electronic cigarettes and other nicotine delivery devices; Kshs. 4,171.59 per unit	40%	
	Liquid nicotine for e-cigarettes; Kshs. 4,171.59 per unit	KShs. 70 per millilitre	
	Imported ready to use SIM cards; No Duty chargeable	KShs. 50 per SIM card	
	Fees charged by digital lenders; No Duty chargeable	20%	
	Importation of cellular phones; No Duty chargeable	10%	
Exemptions from Stamp Duty	Neutral spirits imported by registered pharmaceutical manufacturers; KShs. 278.70 per litre	Exempt from Stamp Duty	<p>The exemptions are subject to approval by the Commissioner.</p> <p>They are also aimed at promoting the operations of the pharmaceuticals and the local motor vehicle industries respectively.</p> <p style="text-align: right;"><b>(Eff: 1<sup>st</sup> July 2022)</b></p>
	Locally manufactured passenger motor vehicles 20% or 35%		

## Excise Duty Act

Provision	Previous Position	Amended Position	Impact / Comment
<b>Excise Duty Act (cont'd):</b>			
Duty on certain Imported items	10% Duty on: A. Unsaturated polyester of tariff 3907.91.00, B. Alkyd of tariff 3907.50.00, C. Emulsion VAM of tariff 3905.91.00, D. Emulsion – Styrene Acrylic of tariff 3903.20.00, E. Homopolymers of tariff 3905.19.00; and F. Emulsion B.A.M of tariff 3906.90.00	10% Duty on: A. Imported Unsaturated polyester of tariff 3907.91.00, B. Imported Alkyd of tariff 3907.50.00, C. Imported Emulsion VAM of tariff 3905.91.00, D. Imported Emulsion – Styrene Acrylic of tariff 3903.20.00, E. Imported Homopolymers of tariff 3905.19.00; and F. Imported Emulsion B.A.M of tariff 3906.90.00	This is to bring clarity to the Duty chargeable on these items, which were introduced by the Finance Act, 2021.  <b>(Eff: 1<sup>st</sup> July 2022)</b>
Betting on Horse-racing	7.5% of the amount wagered	Exempt from Stamp Duty	This is aimed at promoting the horse-racing sports industry in Kenya.  <b>(Eff: 1<sup>st</sup> July 2022)</b>



# Tax Procedures Act

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## Tax Procedures Act

Provision	Previous Position	Amended Position	Impact / Comment
<b>Tax Procedures Act:</b>			
Notification to the Commissioner on changes to Trusts	Only Registered Trusts were required to notify the Commissioner on any changes to the Trust.	The Act has amended this provision to require both registered and unregistered Trusts to notify the Commissioner on any changes to the business, trading name, address and details of the Trustees, within 30 days of the change	This will compel Trusts, whether registered or not, to furnish the Commissioner with information relating to their operations.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Requirement of a PIN for the Registration of Trusts	Previously, there was no requirement for a Registered Trust to have a PIN	The Act has amended this position to include a PIN number as a requirement to the registration of Trusts	This is a measure by the Government to emphasize scrutiny on Trusts.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Restriction on claiming of input tax	Previously there were no express provisions in the TPA Act on deduction of input tax	The Act has amended Section 31 of the TPA Act to the effect that, in the case of VAT, input tax shall be allowed for deduction within six months after the end of the tax period in which the supply or importation occurred.	This means that input VAT cannot be claimed in an amended return unless that supply occurred within six months after the end of the tax period.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Refund or offset of overpaid Tax	Taxpayers could only apply for refund of overpaid tax	Taxpayers will now be at liberty to request for offset of the overpaid tax against future liabilities or a refund of the overpaid tax in the prescribed form provided the application is made within 5 years or, in the case of VAT, within 6 months after the date on which	This is a welcome move as taxpayers will have the option of offsetting future tax liabilities as opposed to only having overpaid taxes reimbursed in form of cash refunds.  <i>(Eff: 1<sup>st</sup> July 2022)</i>

## Tax Procedures Act

Provision	Previous Position	Amended Position	Impact / Comment
Tax Procedures Act (cont'd):			
Refund or offset of overpaid Tax (Cont'd)		<p>the tax was overpaid. The Commissioner will thereafter be required to make a determination within 90 days as to whether the tax will be refunded or offset against future tax liabilities, failure to which the application will be considered approved.</p> <p>Where the Commissioner fails to refund the tax within 2 years, the same will accrue interest at a rate of 1% per month.</p> <p>Additionally, in the case of refund of tax, the Commissioner shall apply the overpayment in the following order:</p> <ol style="list-style-type: none"> <li>A. in payment of any other tax owing by the taxpayer under the specific tax law,</li> <li>B. in payment of a tax owing by the taxpayer under any other tax law,</li> <li>C. any remainder shall be refunded to the taxpayer.</li> </ol>	<p>Additionally, it is also a welcome move as tax overpayments arising from payment of instalment taxes can be used to offset future instalment tax liabilities without the need of being subjected to an audit by KRA.</p> <p style="text-align: right;"><i>(Eff: 1<sup>st</sup> July 2022)</i></p>

## Tax Procedures Act

Provision	Previous Position	Amended Position	Impact / Comment
Tax Procedures Act (cont'd):			
Refund or offset of overpaid Tax (Cont'd)		<p>Where a person overpays Instalment taxes, the Commissioner shall apply the overpaid tax to offset the taxpayer's future instalment tax liability.</p> <p>A person aggrieved by a decision of the Commissioner under this section may appeal to the Tax Appeals Tribunal within 30 days after being notified of the decision.</p>	<i>(Eff: 1<sup>st</sup> July 2022)</i>
Refund of Tax Paid in Error	<p>Previously, there were no provisions in the TPA Act on tax paid in error.</p> <p>The provisions were only specified in the VAT Act.</p>	<p>The Act has introduced a new Section 47A to enable taxpayers to apply for a refund of tax paid in error.</p> <p>The restrictions to the refund application of tax paid in error would be similar to the cases of overpaid tax, with regard to timelines for application, determination by the Commissioner, need for an audit and order of settlement for any other tax owed.</p>	<p>This is a welcome move as it will provide clarity and additional opportunity for taxpayers to apply for refunds.</p> <p><i>(Eff: 1<sup>st</sup> July 2022)</i></p>

## Tax Procedures Act

Provision	Previous Position	Amended Position	Impact / Comment
Tax Procedures Act (cont'd):			
Refund of Tax paid on Zero-rated or Exempt Supply	There were no provisions governing refund of VAT on zero-rated or exempt supplies	The Act has introduced a new provision allowing the Commissioner, upon approval by the Cabinet Secretary, to refund a tax paid in error in any case where the supply is exempt or zero-rated under the Act but such exemption or the zero rating was not processed within the specified period due to circumstances beyond the control of the taxpayer.	This will be helpful as it will provide relief to taxpayers in cases where applications for VAT exemption or zero-rating are not processed within 6 months.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Agency Notices	Where the Agent is unable to comply with an Agency Notice due to lack of funds in the taxpayer's account, the Agent is required to notify the Commissioner within 7 days.	The Act has amended this provision, from 7 Days to 14 Days.  Additionally, the Commissioner shall serve a copy of the Agency Notice to the taxpayer upon submission to the Agent.  No notice shall be issued unless the Commissioner has confirmed the assessment through an Objection Decision and the taxpayer has defaulted to appeal to the Tax Appeals Tribunal within the prescribed timelines.	This amendment seeks to bring clarity to the issuance of Agency Notices and the timelines with which the taxpayer and the Agent are required to follow in cases where such notices have been issued.  <i>(Eff: 1<sup>st</sup> July 2022)</i>

## Tax Procedures Act

Provision	Previous Position	Amended Position	Impact / Comment
Tax Procedures Act (cont'd):			
Objection to tax decisions	<p>The TPA Act states that the Commissioner is to inform the taxpayer immediately in cases where the objection has not been validly lodged.</p> <p>The Commissioner would issue an Objection Decision within 60 Days of receipt of the notice of objection or any further information required from the taxpayer, failure to which the objection shall be deemed allowed.</p>	<p>The Act has amended this provision to include notification by the Commissioner to the taxpayer within 14 Days, where an objection has not been validly lodged.</p> <p>The Commissioner is also compelled to notify the taxpayer within 14 Days of their decision on the application for extension of time to lodge an objection.</p> <p>Additionally, the Commissioner is also compelled to issue an Objection Decision within 60 Days of receipt of a validly lodged objection.</p>	<p>This is a welcome move as KRA will be required to strictly adhere to the 60-Days rule of processing an objection application.</p> <p><i>(Eff: 1<sup>st</sup> July 2022)</i></p>
Exemption from Withholding VAT	TPA Act only exempted persons dealing in Zero-rated supplies	The Act has expanded the scope of exemption to registered manufacturers whose value of investment in the preceding three years from 1 <sup>st</sup> July 2022 is at least KShs. 3 Billion	<p>This is will provide a reprieve from deduction of WHVAT for such manufacturers.</p> <p><i>(Eff: 1<sup>st</sup> July 2022)</i></p>

## Tax Procedures Act

Provision	Previous Position	Amended Position	Impact / Comment
Tax Procedures Act (cont'd):			
Security on property for Unpaid taxes	The TPA Act enabled the Commissioner to direct in writing the Registrar of Lands to hold as security land and buildings belonging to the taxpayer who has defaulted in paying tax	<p>The Act has replaced this provision with the empowerment of the Commissioner to direct in writing the Land Registrar, the Registrar of Ships, Director General of the National Transport and Safety Authority (“NTSA”) and any other person who the Commissioner deems to have authority to hold property, to register securities over property owned by tax defaulters as security for the unpaid tax.</p> <p>The Commissioner will be required to inform the taxpayer of their direction to the Registrar within 7 days of the notification.</p>	<p>This measure would mean that KRA have a wider scope of assets to be used as security for recovery of unpaid tax, in addition to Land and Buildings.</p> <p><i>(Eff: 1<sup>st</sup> July 2022)</i></p>

A hand is shown holding a credit card over a payment terminal. The background is a blurred store interior with a sign that reads "SALE 50% OFF". The text "Other Tax Provisions" is overlaid in the center in a white serif font, with a horizontal line underneath it.

# Other Tax Provisions

## Other Tax Provisions

Provision	Previous Position	Amended Position	Impact / Comment
Other Tax Provisions :			
Miscellaneous Fees and Levies Act			
Penalties and interest on unpaid refunds arising from excess levies and fees	The Commissioner is empowered to determine penalties and interest only on 'fees' that remain unpaid.	The Commissioner is now empowered to determine penalties and interest on both 'fees and levies' that remain unpaid.	This is to bring clarity to the previous provision and to include levies in the calculation of penalties and interest.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Iron ore subject to Export Levy	N/A	Iron ores and concentrates, including roasted iron pyrites of tariff number 2601;  USD 175 per tonne	This will discourage the export of iron ores as the cost to export will increase due to the imposition of this levy.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Adjustment date for Inflation	Previously, the Inflation Rate was adjusted at the beginning of every financial year	The Act has amended this provision to have the Inflation rate adjusted at a date not later than 1 <sup>st</sup> October of every financial year.	This will ensure uniformity with the provisions of the Excise Duty Act, and provide for ample time for public participation and consultation.  <i>(Eff: 1<sup>st</sup> July 2022)</i>
Exemption from Import Declaration Fee and Railway Development Levy	The following were subject to IDF and RDL: A. Inputs and raw materials imported by manufacturers of pharmaceutical products on the recommendation of the Cabinet Secretary responsible for matters relating to health B. Goods imported for use in the construction and	The Act has Exempted the items from Import Declaration Fee and Railway Development Levy.	This is aimed at reducing the operating costs of players in the pharmaceuticals industry as a measure by the Government to promote vaccine-producing companies to set up shop in Kenya.  <i>(Eff: 1<sup>st</sup> July 2022)</i>

## Other Tax Provisions

Provision	Previous Position	Amended Position	Impact / Comment
Other Tax Provisions :			
Miscellaneous Fees and Levies Act (cont'd):			
Exemption from Import Declaration Fee (cont'd)	<p>maintenance of human vaccine manufacturing plants as approved by the Cabinet Secretary for the National Treasury on the recommendation of the Cabinet Secretary for Health</p> <p>C. Goods, inputs and raw materials imported by a company which is:</p> <ul style="list-style-type: none"> <li>- Engaged in business under a special operating framework arrangement with the Government</li> <li>- Incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least KShs. 10 Billion</li> </ul> <p>subject to approval of the Cabinet Secretary for the National Treasury, on the recommendation of the Cabinet Secretary for health</p>		<i>(Eff: 1<sup>st</sup> July 2022)</i>

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