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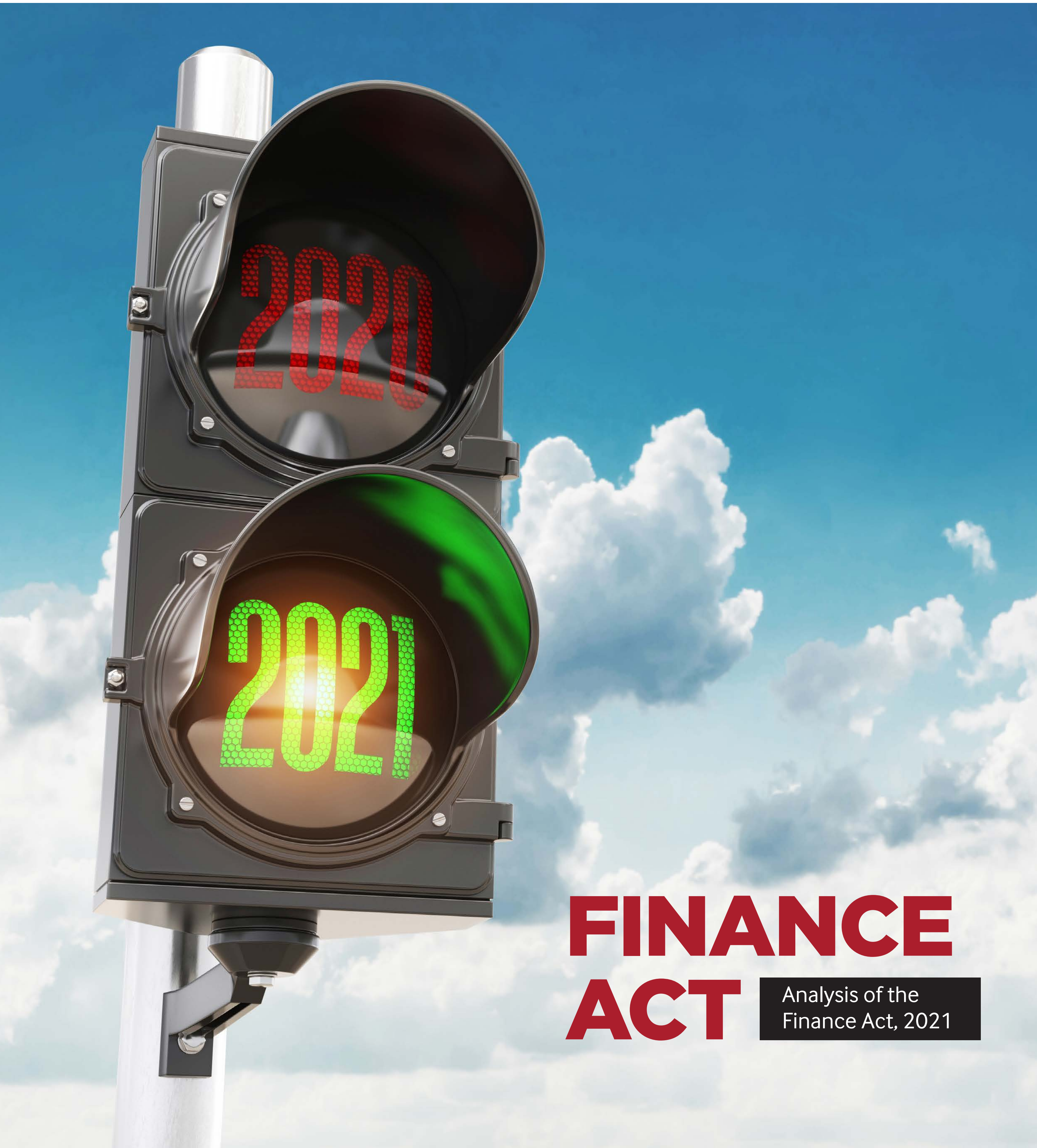
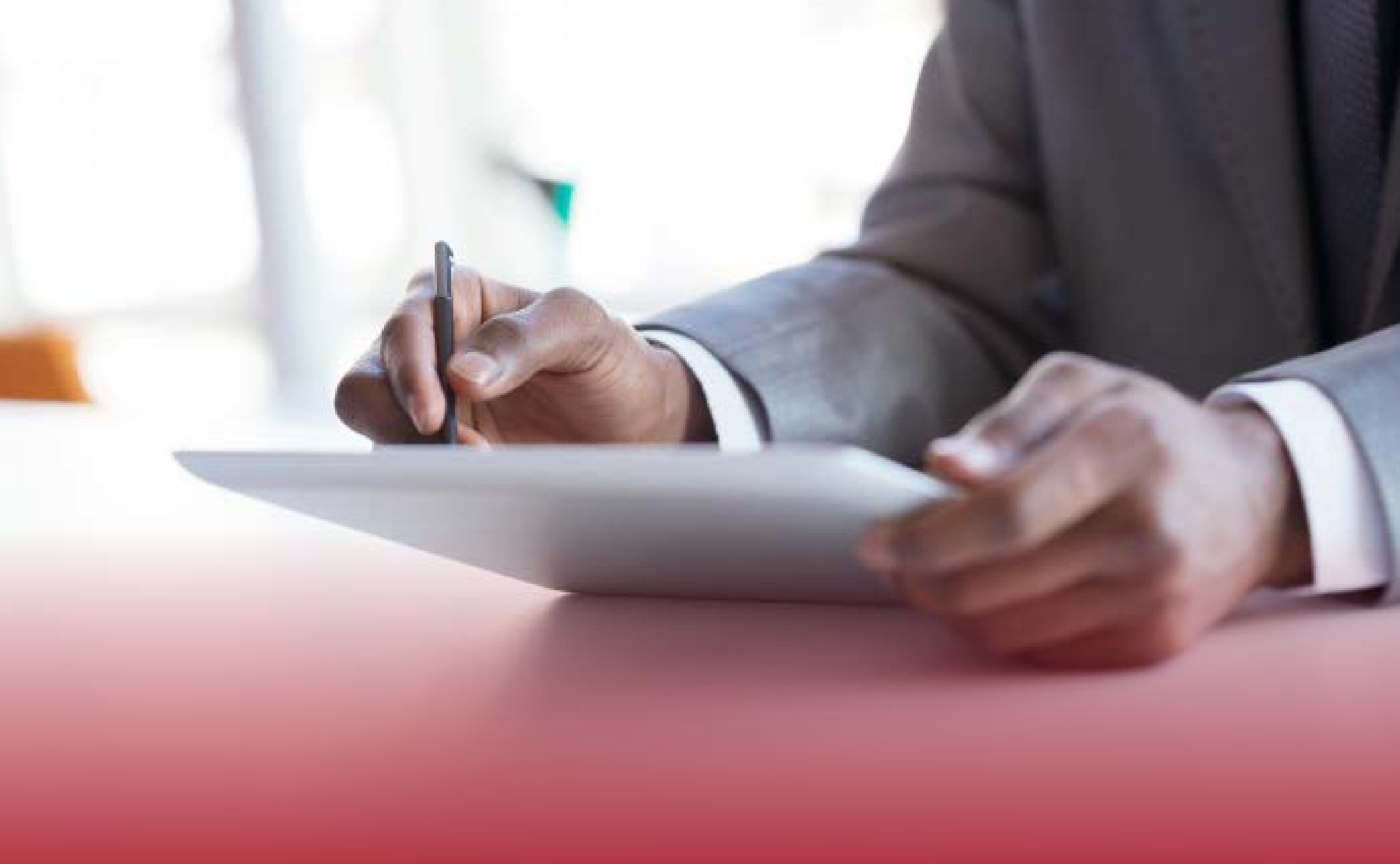


FINANCE ACT

Analysis of the
Finance Act, 2021



ABOUT JM ASSOCIATES

THE FIRM

JM Associates LLP "JM Associates" is a firm established to provide professional and quality services to various organisations in the areas of audit, advisory and tax.

Our services are tailor-made to the specific needs of the organisations to enable our clients to make informed financial decisions; making their businesses more profitable and subsequently achieve their growth goals.

Combining insights and innovation from multiple disciplines and industries, we help organizations excel no matter what they do and where they are in the region. We examine opportunities and challenges from every angle hence making our clients better at what they do. Through this approach, we help businesses uncover opportunities and manage risks in ways that help them to create more value every step of the way.

JM Associates in Kenya is one of the fastest growing professional services' firms in East Africa. The firm has more than 30 professional accountants and over 20 independent consultants.

JM Associates is a member of ANTEA, an international association of independent firms offering auditing, consulting, tax and legal advice. ANTEA has representatives in 70 countries and more than 250 offices worldwide.

Through our membership in ANTEA, we are able to provide our clients who have cross-border interests with up-to date advise, and our local clients; innovative solutions anchoring on knowledge sharing within the ANTEA Network.

OUR VALUE PROPOSITION

We measure our success in terms of the long-term value we deliver, rather than our short-term revenue. Our preferred way of working is to form long-term relationships with clients and bring high quality advice with actionable results, an insight into and understanding of our clients' objectives, and working practices that involve a strong relationship balance, independence and challenge. Overall focus is on delivering sustainable results.

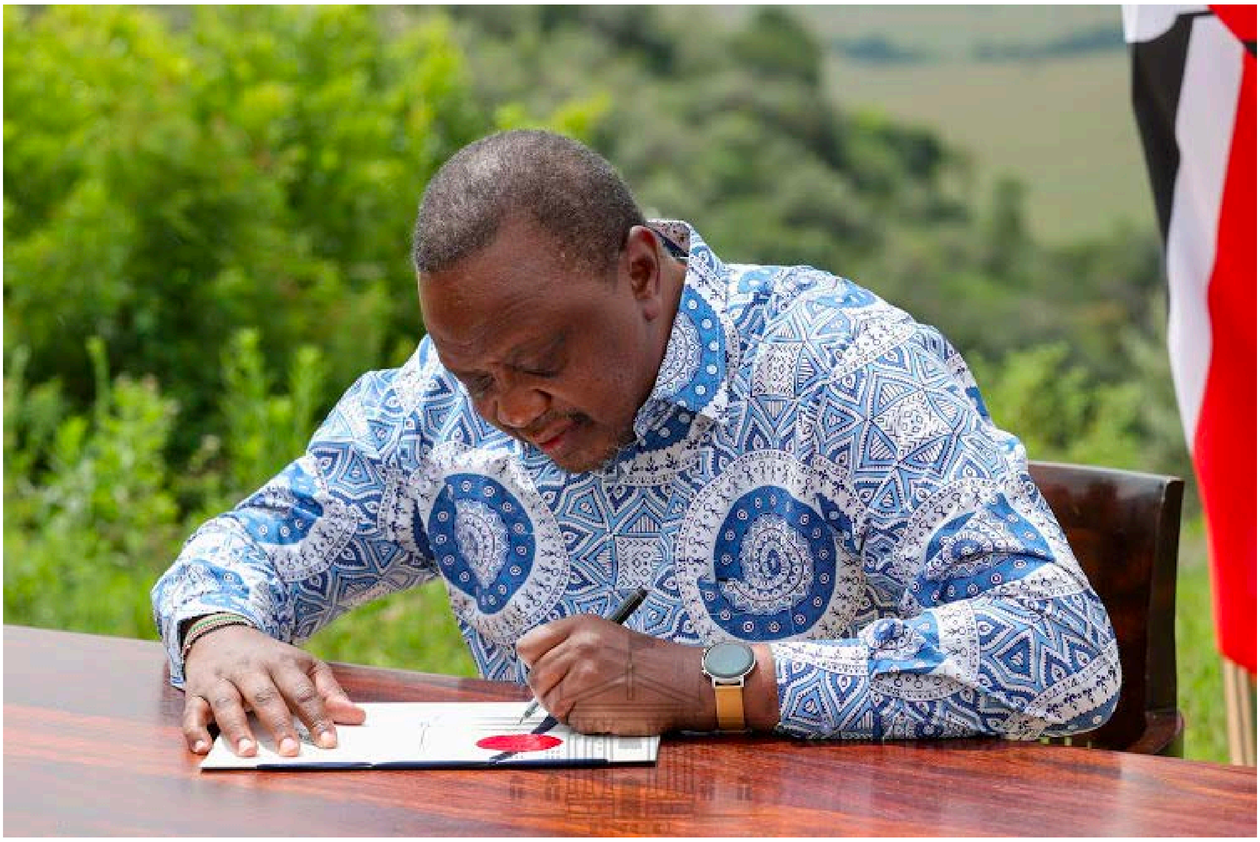
Introduction

The Finance Act ("the Act"), 2021 received Presidential assent on 29th June 2021. Most of the changes will be effective from 1st July 2021, which is the Government's fiscal year, while a few will be effective from 1st January 2022.

The Bill proposed by Treasury, according to CS Yatani seeks to help create a legal and policy framework to help the government achieve its medium-term budget goals.

The Financial Act of 2021 introduces amendments to various tax-related Acts of Parliament (Income tax, VAT, Exercise Duty, Tax Procedures and Miscellaneous fees and Levies) as well as other related statutes in the public finance sector

The amendments that touched various tax laws is described further in the next pages.



President Uhuru Kenyatta assents four Parliamentary Bills into law. Image: PSCU

1.0

Amendments to the Income Tax Act, CAP 470.

Definition of Control

Section 2(a) of the Income tax act CAP 470 which defines Control, has been amended to include the following new definitions.

In relation to a person, 'control 'shall mean,

- Holding at least 20% of the voting rights in a company directly or indirectly.
- a case where a loan advanced by the person to another person constitutes at least seventy per cent of the book value of the total assets of the other person excluding a loan from a financial institution that is not associated with the person advancing the loan;
- A guarantee by the person for any form of indebtedness of another person constitutes at least seventy per cent of the total indebtedness of the other person excluding a guarantee from a financial institution that is not associated with the guarantor.
- Appointing more than half of the board of directors of another person or at least one director or executive member of the governing board of that person;
- Ownership of or has the exclusive rights over the know-how, patent, copyright, trade mark, licence, franchise or an y other business or commercial right of a similar nature, on which another person is wholly dependent for the manufacture or processing of goods or articles or business carried on by the other person.
- Supplying at least ninety per cent of the supply of the purchases of another person
- In the opinion of the commissioner, influencing the prices or other conditions relating to the supply of the purchases of another person.
- to purchase at least ninety per cent of the sales of another person
- in the opinion of the Commissioner, influencing the price or any other condition of the sales of another person
- Any other relationship, dealing or practice with another person that the Commissioner may deem to constitute control.

Amendments to Section 2 (b).

Permanent Establishment amendment

Deletion of the definition of "permanent establishment" and substituting the following new definition.

- a fixed place of business through which business is wholly or partly carried on and includes a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources, a warehouse in relation to a person whose business is providing storage facilities to others, a farm, plantation or other place where agricultural, forestry plantation or related activities are carried on and a sales outlet.
- a building site, construction, assembly or installation project or any supervisory activity connected to the site or project, but only if it continues for a period of more than one hundred and eighty-three days.
- the provision of services, including consultancy services, by a person through employees or other personnel engaged for that purpose, but only where the services or connected business in Kenya, continue for a period of, or periods exceeding in the aggregate, ninety-one days in any twelvemonth period commencing or ending in the year of income concerned
- An installation or structure used in the exploration for natural resources: Provided that the exploration continues for a period of not less than ninety-one days.
- A dependent agent of a person who acts on their behalf in respect of any activities which that person undertakes in Kenya including habitually concluding contracts, or playing the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the person, but excludes the following activities where the activities are of a preparatory or auxiliary character.
    - o The use of facilities solely for the purpose of storage, or display of goods or merchandise belonging to the enterprise;
    - o The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, or display;
    - o The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise
    - o The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise
    - o The maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity
    - o The maintenance of a fixed place of business solely for any combination of activities mentioned in paragraphs (i) to (v).

Amendment of section 3 of the Income tax Act, CAP 470

Clarification on Digital Service Tax

Digital Service Tax (DST) was introduced by the Finance Act, 2020. It is applicable on income derived from or accrued in Kenya from the provision of services through a digital marketplace.

The Income tax act has been amended by deleting section 3(ca) and thus substituting it with the following on Digital service tax.

- DST shall cover all income accrued from business activities made over the internet or an electronic network including through a digital marketplace.

A **digital marketplace** for this case shall mean an online platform, which enables users to sell or provide services, goods or other property to other users.

NB; Imposition of DST has been restricted only to non-resident persons whose income is derived from or accrued in Kenya from the provision of services through a digital marketplace.

Non-resident persons subject to will be required to submit a return and pay DST on or before the 20th day of the month following the end of the month in which the digital service was offered, which is still the case currently.

An amendment has also been made in Act to clarify that DST is not applicable to income subject to Withholding Tax (WHT) and telecommunications income taxed under Section 9(2) of the Income Tax Act, CAP 470.

These exemptions had already been gazetted through the DST regulations, 2020 - Legal Notice No. 207.

Re-introduction of the indefinite carrying forward of tax losses.

The Income tax act has re-introduced the indefinite carrying forward of tax losses.

This was the position until 2010 when carrying forward of tax losses was capped to five years and later in 2015 when it was capped to 10 years.

This amendment will be advantageous especially to taxpayers with large capital investments that attract investment deductions that result in huge tax losses that cannot be utilized within the 10-year period.

Thin capitalization

The Act has completely Overhauled thin capitalization provisions by repealing the current provisions where interest payments in a year of income by a foreign controlled entity are not either partly or fully tax deductible depending on the ratio of debt to equity.

The Act has introduced restriction on tax deductibility of interest expense on any gross interest amounts exceeding 30% of Earnings Before Interest, Taxes, Depreciation and Amortization (EBITDA).

This provision shall apply to all entities including those in the extractive sector and shall be applicable to interest on all loans, payments that are economically equivalent to interest and expenses incurred in connection with raising the finance. The deferment of realized foreign exchange losses for thinly capitalized companies until they cease to be thinly capitalized, however, remains.

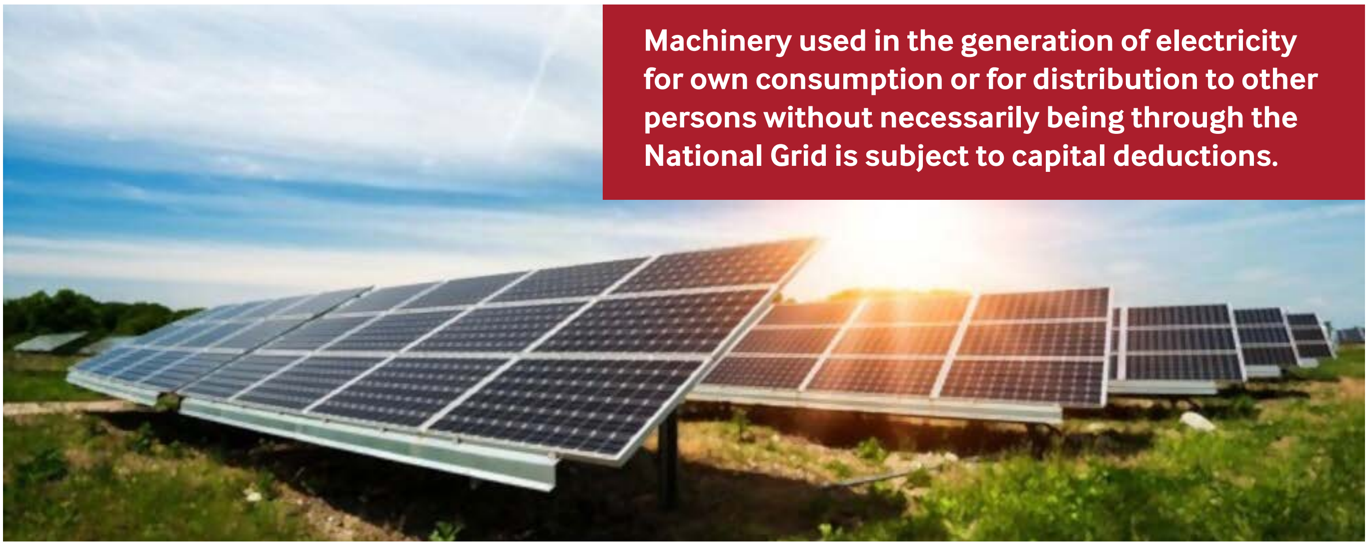
The interest restriction appears to be applicable not only to foreign controlled companies but to local companies as well

NHIF Amendments.

Insurance Relief on NHIF Contributions

Individual taxpayers will now be allowed to claim insurance relief on contributions made to the National Hospital Insurance Fund ("NHIF") in a year of income.

Digital Service Tax (DST) shall cover all income accrued from business activities made over the internet or an electronic network including through a digital marketplace.



Machinery used in the generation of electricity for own consumption or for distribution to other persons without necessarily being through the National Grid is subject to capital deductions.

Amendments to the investment allowances deduction method

Item	New Investment deduction rate
Hotel buildings, buildings used for manufacture, hospital buildings and Petroleum or gas storage facilities	50% in the first year and 25% on the residual value per year on equal instalments
Commercial and educational buildings including student hostels	10% per year on equal instalments
Machinery used for manufacture, hospital equipment and ships and air crafts	50% in the first year and 25% on the residual value per year on equal instalments
Motor vehicles and heavy earth moving equipment	25% per year on equal instalments
Computer and peripheral, computer hardware, computer software, calculators, copiers and duplicating machines	25% per year on equal instalments
Furniture and fittings and telecommunication equipment	10% per year on equal instalments
Filming equipment	25% per year on equal instalments
Machinery used to undertake operations under prospecting right and machinery used to undertake exploration operations under a mining right	50% in the first year and 25% on the residual value per year on equal instalments
Other machinery	10% per year on equal instalments
Fibre optic cable	10% per year on equal instalments
Farm works	50% in the first year and 25% on the residual value per year on equal instalments

These changes of capital deduction criteria from reducing balance to equal instalments will see taxpayers equally spread the capital deductions over the life of the asset depending on the applicable investment allowance rate. As a result, taxpayers will claim investment allowances in shorter periods.

NB;

- Machinery used in the generation of electricity for own consumption or for distribution to other persons without necessarily being through the National Grid is subject to capital deductions.
- civil works to include roads and parking areas, railway lines and related structures, water, industrial effluent and sewerage works, communications and electrical posts and pylons and other electrical supply works, and security walls and fencing.

Amendments to the Ninth Schedule (Taxation of Extractive Industries) to the ITA

Aligning of the capital deductions criteria for machinery used to undertake operations in extractive industry under a prospecting right to equal instalments from a reducing balance basis as per the Second Schedule.

Increase of the withholding tax rate for service fees paid by a contractor or a licensee from 5.625% to 10%.

Reduction of the withholding tax deducted by a contractor in the case of management, training or professional fees from 12.5% to 10%.

2.0

Amendments to the Tax Procedures Act

Broadening the scope of tax laws governed under the tax procedures act.

The definition of the word **"Tax law"** under the TPA has been amended to include the Miscellaneous Fees and Levies Act, 2016.

Recognition of international tax agreements

These are multilateral agreements and treaties entered into or on behalf of the Government of Kenya relating to international tax, compliance and prevention of evasion of tax or exchange of information on tax matters.

Confidentiality in administration of tax law

Confidentiality scope on information disclosure as stipulated under the TPA has been expanded to include conditions specified in Multilateral Agreements and Treaties relating to the exchange of information on tax matters.

The issues handled under such arrangements shall be guided by the Agreements and Treaties between the two Contracting states.

Introduction of new record keeping requirements for tax purposes.

For this case, the new record keeping period has been revised from five years to seven years. This is to align it with the Kenyan Companies Act, 2015 that requires a Company to keep records for period of seven years.

This implies that taxpayers will be required to produce records for a longer period in the event of a KRA audit.

Abandonment of tax

For this case, the Commissioner will now be required to file a detailed report with the National Treasury for all the abandoned taxes on 30 June and 31 December of every year.

This amendment has further gone ahead and determined the basis upon which the Commissioner may propose abandonment of tax to the CS.

Digital transactions

Non-resident persons whose businesses operate through a digital marketplace will now be required to report their transactions in the respective foreign currency as may be approved by the Commissioner.

However, this provision excludes non-resident persons who file their returns via a tax representative.

The Commissioner for this case will be required to seek intervention from relevant Tax Authorities in the collection of tax from businesses operating via the internet, electronic network or digital service marketplace.

Amendment of assessments

Increase of the period within which the Commissioner can amend assessments from five to seven years.

Aligning of the Commissioner's powers of amending returns to the period proposed for carrying out audits and maintaining records.

Exemption from VAT withholding in certain circumstances scrapped.

These include in cases whereby;

The Commissioner currently exercises in exempting suppliers from the withholding VAT provisions. There is no clarity on what will happen to already approved exemptions, which in the past were granted for a period of up to 24 months. Businesses that are perpetually in refund position will be pushed into further refunds.

Tax refunds

In cases where the Commissioner ascertains and notifies a taxpayer of a tax refund and the refund due is utilized to offset other outstanding taxes, the interest and penalties of the taxes due will no longer accrue from the date the Commissioner informs the taxpayer.

Due date for submissions and payments

Amendments made in this case is that if the due date for submission and payment of taxes due fall on a weekend or a public holiday, the due date is now deemed to be the previous working day excluding those submitting a notice of objection, tax return or a tax payment electronically.

However, the due dates remain as stipulated in law for any electronic tax filings and payments.

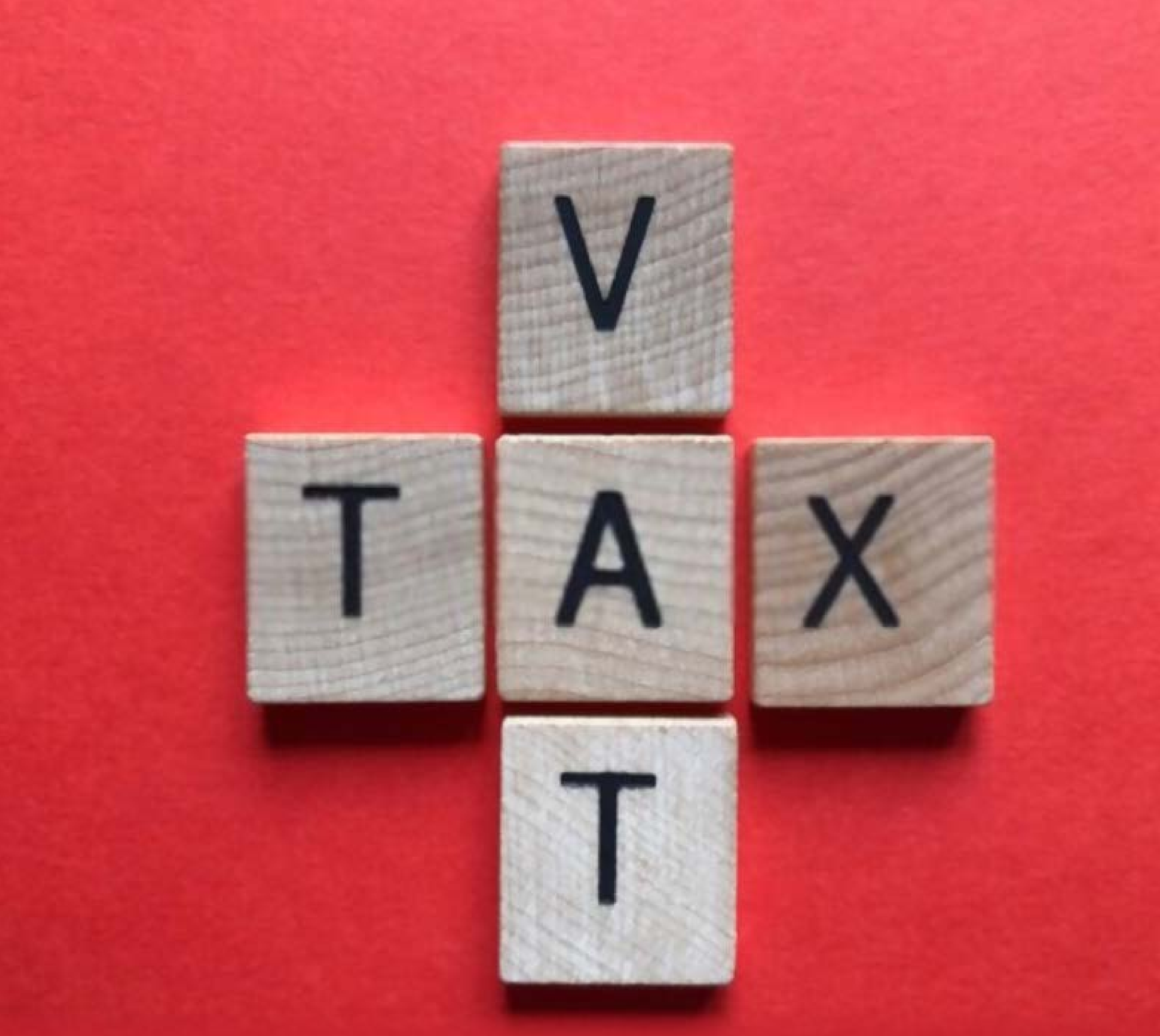
Penalties for non-compliance with common reporting standards

i) Kshs 100,000 for each false statement or omission, to imprisonment for a term not exceeding 3 years or to both.

ii) Kshs 1,000,000 for each failure to file an information return or nil return by a Reporting Financial Institution.

iii) Kshs 20,000 for failure to comply with a duty of obligation where no other penalty is prescribed and Kshs 20,000 for each day during which non-compliance continues for a period not exceeding 60 days.

The new record keeping period for Tax Audit Purposes has been revised from five years to seven years. This is to align it with the Kenyan Companies Act, 2015 that requires a Company to keep records for period of seven years.



3.0

Amendments to the VAT Act

Clarity on applicability of VAT on online transactions

The Act has clarified that VAT is applicable on all online vatable transactions that are conducted over the internet or on an electronic network.

The act further emphasizes that a digital marketplace is an online platform, which enables users to sell or provide services, goods or other property to other users. Any persons doing online business be it sale of goods or provision of services are required to register and charge their customers VAT if their taxable sales exceed the set threshold of KShs 5 million annually.

Restriction of input VAT on hiring and leasing costs for automobiles

The Act has restricted registered persons from deducting input VAT incurred on leasing and hiring of passenger cars or mini-buses and their repair and maintenance thereof including spare parts.

Deletion of Group VAT registration

The act has revoked group registration as one registered person for VAT purposes. Since enactment of the VAT Act in 2013, the law required the CS for The National Treasury to provide Regulations to guide on group registrations. The draft group VAT Registration Guidelines were later published for public participation sometimes back but these have never been gazetted to date.

VAT Regulations.

The Act has given the CS National Treasury a wide latitude of powers in gazetting VAT Regulations without seeking the approval of the National Assembly.

Initially, the CS was required to seek the approval of the National Assembly before gazetting any VAT Regulations.

This amendment is retrogressive in the sense that it leaves a wide un-checked latitude of powers to the Executive, which can be exercised whimsically and insensitively. The principle of separation of powers for this case has been negated, leaving taxpayers at the mercy of the Executive.

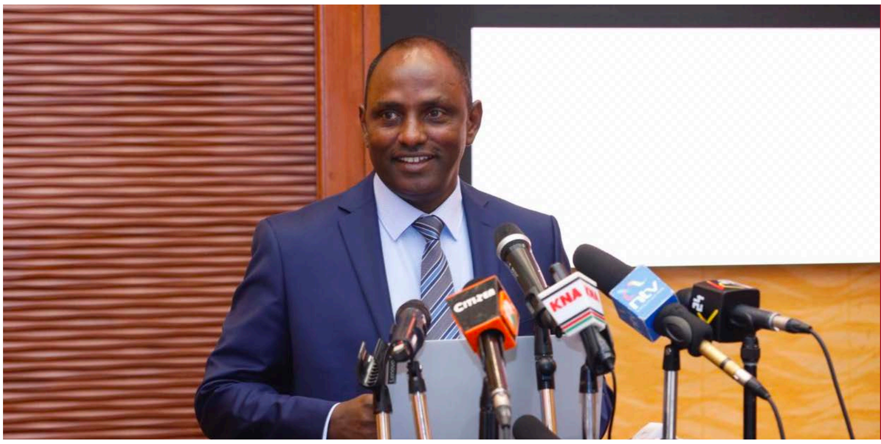
There is no rationale or justification why the Government would want to avoid approval by the National Assembly for such important Regulations that could have far- reaching implications to the business community and consumers generally. This is bad law and should not be allowed to pass.

Reclassification of goods from standard rate to VAT exempt status Effective 1st July 2021

No.	Item
1	2106.10.00 Protein concentrates and textured protein substances
2	2106.90.10 Food preparations specially prepared for infants
3	2106.90.99 Other – Food preparations not elsewhere specified or included
4	2936.27.00 Vitamin C and its derivatives
5	3002.11.00 Malaria diagnostic test kits
6	3002.13.00 Immunological products unmixed, not put up in measured doses or in forms or packings for retail sale.
7	3002.14.00 Immunological products mixed, not put up in measured doses or in forms or packings for retail sale.
8	3002.15.00 Immunological products put up in measured doses or in forms or packings for retail sale.
9	3004.43.00 Other medicaments, containing alkaloids or derivatives containing norephedrine or its salts.
10	3004.60.00 Other, containing antimalarial active principles described in Subheading Note 2 to this chapter
11	2106.90.91 Food supplements
12	0402.21.00 Milk in powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5% not containing added sugar or other sweetening matter
13	0402.91.00 Other not containing added sugar or other sweetening matter
14	0402.99.00 Other milk
15	9021.10.00 Orthopaedic or fracture appliances
16	9021.50.00 Other artificial parts of the body: Pacemakers for stimulating heart muscles, excluding parts and accessories
17	9025.19.00 Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments, thermometers and pyrometers, not combined with other instruments; Other
18	9019.20.00 Airway Guedel and Ambu bags
19	9018.90.00 Blood giving set and infusion sets
20	Medical ventilators and the inputs for the manufacture of medical ventilators
21	Physiotherapy accessories, treadmills for cardiology therapy and treatment of tariff number 9506.91.00 for use by licensed hospitals

22	Dexpanthenol of tariff number 3304.99.00 used for medical nappy rash treatment by licensed hospitals
23	Medicaments of tariff numbers 3003.41.00, 3003.42.00, 3003.43.00, 3003.49.00, 3303.60.00 (excluding goods of heading 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses.
24	Diagnostic or laboratory reagents, of tariff number 3822.00.00 on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 30.02 or 30.06, certified reference materials
25	Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00,9018.13.00,9018.14.00,9018.19
26	Other instruments and appliances, of tariff number 9018.41.00, used in dental sciences, dental drill engines, whether or not combined on a single base with other dental drill engines whether or not combined on a single base with other dental equipment.
27	Other instruments and appliances, including surgical blades, of tariff number 9018.49.00, 9018.50.00, 9018.90.00 used in dental sciences.
28	Ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus.
29	Other breathing appliances and gas masks, excluding protective masks having neither mechanical parts nor replaceable filters.
30	Artificial teeth and dental fittings of tariff numbers 9021.21.00, 9021.29.00 and artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00.
31	Apparatus based on the use of x-rays, whether or not for medical, surgical or dental of tariff numbers 9022.12.00, 9022.13.00, 9022.14.00 and 9022.19.00.
32	Apparatus based on the use of alpha, beta or gramma radiations, whether or not for medical, surgical or dental of tariff numbers 9022.21.00, 9022.29.00, 9022.30.00 and 9022.90.00
33	Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or other phenomena, whether or not recorded of tariff number 8523.80.10, including matrices and masters for the production of discs.
34	Weighing machinery (excluding balances of a sensitivity of 5 cg or better) of tariff number 8423.31.00 including weight operated counting or checking machines; weighing machine weights of all kinds.
35	Fetal Doppler-Pocket (wgd-002) and pulse oximeter finger held (Gima brand) Pc of tariff number 9018.19.00.
36	Sterilizer Dry Heat (Wdg-001-Grx-05A) Pc, autoclave steam table tops of tariff number 8419.20.00
37	Needle holders and urine bags of tariff heading 3926
39	Tourniquets of tariff number 3926.90.99 for use by licensed hospitals.
40	Taxable goods, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration by a company granted a prospecting or exploration license in accordance with the Energy Act, 2019, production sharing contracts in accordance with the Mining Act, 2016, upon recommendation by the Cabinet Secretary responsible for matters relating to mining, as the case may be.
41	Specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters and deep cycle batteries that use or store solar power, upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy.

NB: Exemption on medical items (serialized 20 to 39 above) shall be granted upon recommendation of the CS responsible for health.



VAT regulations Act has given the CS National Treasury a wide latitude of powers in gazetting VAT Regulations without seeking the approval of the National Assembly.

Reclassification of goods from VAT exempt status to standard-rated Effective 1st July 2021.

No.	Item
1	Disposable plastic syringes of tariff No. 9018.31.10
2	Other syringes with or without needles of tariff No. 9018.31.10
3	0402.99.10 Milk, specifically prepared for infants
4	0402.99.10 Other not containing added sugar or other sweetening matters specially prepared for infants
5	Airlid paper without super absorbent polymer 180gsm/67 of tariff number 4803.00.0
6	Airlid paper without super absorbent polymer 80gsm/67 of tariff number 4803.00.0
7	Plain polythene film/PE of tariff number 3920.10.10
8	PE white 25-40gsm / release paper of tariff number 4810.99.00
9	12-16 gsm spun bound piyropo nonwoven cover stock/15gsm spun bound PP non-woven SSMMS hydrophobic leg cuffs of tariff number 5603.1190.

Exempt services

These include;

- Exported services

Vatable commodities at a standard rate of 16%

Ordinary bread to VAT. This has resulted in price increase of ordinary bread.

Extension of special VAT exemptions

Any person who has supplied taxable goods to persons that had an agreement or contract with the Government prior to 25th April 2020, which provided for VAT exemption will continue enjoying the exemptions for the unexpired period of the agreement or contract.

VAT exemption for transactions under Real Estate Investment Trusts

The Act has exempted VAT transfer of assets and other transactions related to the transfer of assets into real estate investment trusts and asset-backed securities.

This is aimed at making it cheaper for persons to establish Real Estate Investment Trusts (REITs) hence spurring growth in the real estate sector.

Correction of erroneous tariff codes for VAT exempt goods

The Act has provisions to correct the erroneous tariff codes for the goods stated below. Notably, the goods are currently VAT exempt but bear the wrong tariff codes. This amendment is seeks to align the VAT exempt products with their correct tariff codes:

Item	HS Code in VAT Act	Correct HS code
Other – Heparin and its salts	3001.90.10	3001.90.00
Other human or animal substance prepared for therapeutic or prophylactic uses, not elsewhere specified or included	3001.90.90	3001.90.00
Antisera and other blood fractions and modified immunological products whether or not obtained by means of biotechnological processes	3002.10.00	3002.12.00 & 3002.19.00
Other milk in powder, granules, or other solid forms, of a fat content, by weight, exceeding 1.5%	0402.29.10	0402.29.00
Super absorbent polymer (SAP)	3906.90.0	3906.90.00
IP super soft fluff pulp – for –fluff 310 treated pulp 488*125mm (cellulose)	4703.21.0	4703.21.00
Perforated PE film 15-22 gsm	3921.190.0	3921.90.00
Spun bound non-woven 15-25 gsm	56.03.1190.8	5603.11.00
Air lid paper with super absorbent polymer 180gsm/67	48.03.00.0	4803.00.00
Air lid paper with super absorbent polymer 80gsm/67	48.03.00.0	4803.00.00

Item	HS Code in VAT Act	Correct HS code
Pressure sensitive adhesive	3506.91.90	3506.91.00
Palin polythene film/LPDE	39.21.190.0	3921.19.10
Palin polythene film/PE	39.21.190.0	3921.19.10
PE white 25-40gsm/release paper	48.44.51.10.0	4811.49.00
ADL 25-40gsm of tariff number	56.03.1190.8	5603.11.00
Elasticized side tape	5402.44.10	5402.44.00
12-16gsm spun bound piyropo nonwoven cover stock/12 gsm spun bound pp non-woven SMS hydrophobic leg cuffs	56.03.1190.8	5603.11.00
Polymetric elastic 2/3 strands	3919.90.90.10	3919.90.10

Items subject to VAT effective 1st July 2021.

Effective 1st July 2021, the following items will be subject to VAT at the standard rate of 16%. This is in line with the effective date set out in the Finance Act, 2020.

Item	Previous VAT Treatment	New Rate Effective 01/07/2021
The supply of liquefied petroleum gas.	Zero Rated	16%
8802.11.00 Helicopters of an unladen weight not exceeding 2,000 kg.	Exempt	16%
8802.12.00 Helicopters of an unladen weight exceeding 2,000kg.	Exempt	16%
8802.20.00 Aero planes and other aircraft, of unladen weight not exceeding 2000kgs.	Exempt	16%
8803.30.00 Other parts of aeroplanes or helicopters	Exempt	16%
8805.21.00 Air combat simulators and parts thereof.	Exempt	16%
8805.10.00 Aircraft launching gear and parts thereof; deck arrestor or similar gear and parts thereof.	Exempt	16%
8805.29.00 Other ground flying trainers and parts thereof.	Exempt	16%
8309.90.90 Aluminum pilfer proof caps with EPE liner.	Exempt	16%
Other aircraft (for example, helicopters, aeroplanes); spacecraft (including satellites) and suborbital and spacecraft launch vehicles- • Of an unladen weight not exceeding 2,000kg	Exempt	16%

The Bill has subjected ordinary bread to VAT at the standard rate of 16% from the current rate of 0%

4.0

Amendments to the Excise Duty Act.

Excise duty offset for internet service providers

The Act has amended the Excise Duty Act, 2015 to enable licensed internet service providers (ISPs), who purchase data in bulk for resale, to offset the Excise Duty payable on internet supplied to the final customer against excise duty already paid.

Excise Duty on telephone and internet data services was introduced in the Finance Act, 2018. However, there was no corresponding provision, other than in the case of a licensed manufacturer, for ISPs to offset excise duty paid against amounts payable on supply to the final customer.

Local sugar confectionery and chocolate products

The Act has expanded the application of excise duty to include local sugar confectionery and chocolate products as follows:

- Sugar confectionery of tariff 17.04 at the rate of KShs.20 per Kg; and
- White chocolate in blocs, slabs or bars of tariff 1806.31.00, 1806.32.00, 1806.90.00 at KShs. 200 per Kg.

Previously, excise duty was only applicable to imported sugar confectionery and chocolate products. This will affect the competitiveness of local sugar confectionery and chocolate products in the market while at the same time, increase tax revenues.

Relief for glass bottle importers

The Act has deleted the current excise duty of 25% on imported glass bottles that had previously been introduced through the Business Laws (Amendment) Act, 2020 to encourage local industries to venture into production of glass bottles.

However, this decision was suspended by the East African Court of Justice (EACJ) following an application by a Tanzanian bottle manufacturer who claimed this amendment was discriminatory as it did not provide an exemption for goods imported from the East African Community (EAC) member states.

Change of Excise Duty basis on motor cycles

The Act has changed the basis upon which Excise Duty on motor cycles of tariff 87.11 other than motor cycle ambulances and locally assembled motor cycles is calculated from a fixed rate to an ad valorem rate of 15%. Previously, motorcycles were excisable at a specific rate of KShs 11,608.23 per unit.

Introduction of Excise duty on Jewellery.

The act has introduced excise duty of 10% on articles of jewellery and imitation jewellery of tariff headings 7113 (articles of jewellery and parts thereof, of precious metal or of metal class with precious metal) and 7117 (imitation jewellery) respectively.

Introduction of Excise Duty on Nicotine

The Act has introduced Excise Duty of KShs 5,000/Kg on nicotine or nicotine substitutes intended for inhalation without combustion or oral application. However, medical products approved by the CS for Health have been excluded from this.

Reintroduction of excise duty on betting

The Act has re-introduced excise duty on betting at a rate of 20% on the amount wagered or staked.

This was first introduced through the Finance Act, 2019 and abolished by the Finance Act, 2020 after an outcry by the industry players.

The Act has expanded the application of excise duty to include local sugar confectionery and chocolate products

Abbreviations

KRA - Kenya Revenue Authority

MNE - Multi-National Enterprise

BEPS - Base Erosion and Profit Shifting

CbC - Country by Country

RDL - Railway Development Levy

IDF - Import Declaration Fee

Cs - Cabinet Secretary

VAT - Value Added Tax

TP - Transfer Pricing

DTA - Double Taxation Agreement

NHIF - National Hospital Insurance Fund

ITA - Income Tax Act

CRS - Common Reporting Standards

TPA - Tax Procedures Act

OECD - Organisation for Economic Corporation and Development

ISP - Internet Service Provider

RDL - Railway Development Levy

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