

Tax Alert Analysis of the Finance Act, 2022



Addition to institutions excluded from interest restrictions.

FA amends section 16 of the ITA to add the following institutions in addition to banks or financial institutions licensed under the Banking Act and Micro and Small Enterprises registered under the Micro and Small Enterprises Act, 2012 the Finance Act, on entities excluded from interest restriction provisions:

- 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.
- d) companies undertaking the manufacture of human vaccines.
- e) companies engaged in manufacturing whose cumulative investment in the preceding five years from the commencement of this provision is at least five billion shillings.
- f) companies engaged in manufacturing whose cumulative investment is at least five billion shillings: Provided that the investment shall have been made outside Nairobi City County and Mombasa County.
- g) holding companies that are regulated under the Capital Markets Act.

Effective: 1st July 2022

Deferring foreign exchange losses in line with interest restriction rule

The Act repeals section 4A of the ITA to defer any realised foreign exchange loss incurred by a company whose gross interest paid or payable to related persons and third parties exceeds 30% of the company's earnings before interest, taxes, depreciation, and amortization (EBITDA) in any financial year.

Our comments.

Whether locally or foreign owed all entities will be subjected to interest rate restrictions provisions of Section 16 of ITA. The following institutions have however been added on entities excluded from interest restriction provisions:

- 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.
- d) companies undertaking the manufacture of human vaccines.
- e) companies engaged in manufacturing whose cumulative investment in the preceding five years from the commencement of this provision is at least five billion shillings.
- f) companies engaged in manufacturing whose cumulative investment is at least five billion shillings: Provided that the investment shall have been made outside Nairobi City County and Mombasa County
- g) holding companies that are regulated under the Capital Markets Act

Effective: 1st July 2022

Change of tax point on shares granted to employees under Employee Share Ownership Plans (“ESOPs”)

The Act has amended Section 5A to define the tax point for shares issued under the employee share ownership plan from the day of grant date to the day(s) on which the employee exercises the option. Under

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the repealed section shares granted under ESOPS were deemed to have accrued for tax purposes at the end of the vesting period (period between the date of offer by the employer and the date after which the employee exercises the purchase option).

Our Comments

This is a reprieve to those employees who at the end of the vesting period do not wish to exercise the option.

Effective: 1st July 2022

Digital Service tax applicability

Section 12E of the Income tax Act which had introduced the Digital service Tax (DST) has been amended after definition of a permanent home. With the newly introduced definition, this clarifies DST will only be applicable to non-resident persons without a permanent establishment in Kenya.

Our comments

After redefinition of a permanent home, it was necessary to clarify on who the DST is applicable we also note that it was a reprieve to drop as proposed in the finance bill increasing the rate of DST from 1.5% to 3%. The DST rate now remains 1.5%.

Effective: 1st July 2022

Expenses allowable for tax deductions

The Act has amended the ITA Section 15 (2) (w) to state that any donation in that year of income to a charitable organization whose income is exempt from tax under paragraph 10 of the First Schedule to this Act, or to any project approved by the Cabinet Secretary.

Our comments

This will be a relief to entities who donates to charitable organizations in other kinds other than cash to allow the donation as a deductible expense. Previously the section restricted allowability of only cash donations and with condition that the organisations are registered or exempt from registration under either the Societies Act or the Non-Governmental Organizations Coordination Act and that have valid income tax exemption.

Further, this will go a long way to enable institutions contribute to the entities that would assist to relieve poverty, advance education, religion and other justifiable causes.

Eff: 1st July 2022

Increase in Capital Gains Tax Rate

The Act has amended the Capital Gains Tax (CGT) rate by increasing it from 5% to 15%. Capital Gain is a net gain realisable on transfer of property in Kenya.

Our comments

There will be an increased revenue to the government. However, given that the parliament had in previous legislation dropped the legislation to include inflation adjustment technically known as indexation, the investors will still be exposed to high tax charges hence less investment return. This will in turn suppress the property investment industry.

Effective: 1st January 2023

Insurance relief on Spouses

The act has amended the Section 31 of the ITA 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 with the words “the individual has paid a premium for an insurance made by the individual on the individual’s life or the life of the individual’s spouse or child.

Our comments

This is to enhance gender neutrality in persons making payments to insurance.

Effective: 1st July 2022

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PAYE penalties for employers

The Act has deleted Section 37(3) of the Income Tax Act which gave the commissioner the mandate to remit PAYE penalties.

Our Comments

Penalty administration will now be as per the Tax Procedures Act of 2015. This is an alignment and clean up exercise.

Effective: 1st July 2022

Tax incentives

The finance act has introduced incentives for the purpose of encouraging investors in the following sectors.

Entities involved in or meeting the following criteria will be subjected to a rate of tax specified in the special operating framework arrangement with the Government.

- a) The company is engaged in business under a special operating framework arrangement with the Government.
- b) The companies incorporated for purposes of undertaking the manufacturer of human vaccines.
- c) The companies 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.

Change in tax rates and reduced tax rates

- a) Entities engaged in in respect of operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority, will be subjected to 15% income tax rate for the first ten years from the year of commencement of its operations.
- b) Entities engaged in operating a shipping business in Kenya, will also be subjected to a 15% income tax rate for the first ten years from the year of commencement of its operations.
- c) in respect of a company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority (NIFCA) 15% for the first ten years from the year of commencement of its operations.
- d) Tax upon the capital gains of a person charged under section 3(2)(f) shall be charged at the rate of 15% and shall not be subject to further taxation. Provided that in the case of a firm certified by the Nairobi International Financial Centre Authority (NIFC) and invests 5 billion shillings in Kenya and the transfer of such investment is made after five years, the applicable rate shall be the rate that was prevailing at the time that the investment was made

Income exempted from tax in Kenya

The First Schedule of the Income tax has been amended to include the following income as exempt Income.

- Deemed interest in respect of an interest free loan advanced to a company undertaking the manufacture of human vaccines.
- 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.
- Compensating tax accruing to a company undertaking the manufacture of human vaccines.
- Dividends paid by a company undertaking the manufacture of human vaccines to any non-resident person.
- Income of a company undertaking the manufacture of human vaccines
- Dividends paid by Special Economic Zone enterprises, developers and operators licensed under the Special Economic Zones Act
- Dividends paid by Special Economic Zone enterprises, developers, and operators to any non-resident person.

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A. Investment Allowance

Several amendments have been made on the repealed 2nd schedule of Income Tax Act. The Act 2022 has introduced investment deduction at the rate of 150% on investments made outside Nairobi County or Mombasa County subject to meeting the following criteria.

- To have invested at least 2 billion shillings cumulatively for the four years preceding effective date of this clause (1st July 2022); or
- The cumulative investment for the three years succeeding 01/07/2022 at least two billion shillings.
- The Finance Act seeks to extend the validity of investment allowance at the rate of 150% on capital expenditure of at least five billion shillings incurred on the construction of bulk storage and handling facilities for supporting the Standard Gauge Railway operations of a minimum storage of one hundred thousand metric tonnes of supplies to 31 December 2023.

Our comments

There is no clarity on the cumulative approach whether the investors have to claim the Investment allowance only in the 2nd year after cumulatively hitting the 2 billion mark or can be claimed in the first year of use when the expenditure is incurred. We expect the CS Treasury and the authority to come up with guidelines on the same.

Transfer Pricing scrutiny on resident entities transacting with entities in preferential tax regimes

The Act has added on the transactions for Transfer pricing purposes to include resident entity and an entity in a preferential tax regime to include transactions between a resident person with:

- A non-resident person or an associate of the non-resident person operating in a preferential tax regime; and
- A permanent establishment of a non-resident person operating in a preferential tax regime.

A definition of preferential tax regime has been expanded to include a foreign tax jurisdiction which:

- Does not tax income.
- The rate of tax on income is less than 20%.
- Does not conform to the framework for the exchange of information.
- Does not allow access to banking information; and
- Lacks transparency on corporate structure, ownership of legal entities, beneficial owners of income or capital, financial disclosure or regulatory supervision.

Our comments

This is for the purpose of continued scrutiny for TP arrangements to prevent expatriation of profits to jurisdictions with a lower or no tax implications in and outside Kenya after the expanded definition of preferential tax regimes



TAX PROCEDURES ACT

Deduction of input VAT on return amendment

The Act has amended Section 31 of the TPA to limit the period in which the commissioner can amend a VAT return to 6 months from the date of supply or the import was made. This is to enable the taxpayer to claim input VAT (however does not revoke the provision to allow the deductibility of input tax within a period of 6 months after the end of the tax period in which the supply or importation occurred)

Security on property for unpaid tax.

The Act has repealed section 40 of the TPA to this effect empowering the Commissioner to attach as security any land or buildings belonging to a taxpayer in the event the taxpayer fails to pay any tax by the due date under the following condition,

- a) The commissioner notifies the registrars of the property has been subjected as a security to unpaid taxes
- b) The Commissioner shall within seven days notify the taxpayer or any other person who may have an interest in the property of the use of the property as security of unpaid tax.
- c) Any prior restraints will supersede the commissioner's notice, however subsequently the property shall be restrained from disposal, mortgage, or charge on the property until the commissioner recovers the due taxes from the taxpayer in full.
- d) Upon the payment of the whole of the amount of unpaid tax secured under this section, the commissioner shall direct the Registrar in writing to cancel the notification without levying or charging a fee, record the cancellation of the notification and the notification shall cease
- e) Where the taxpayer fails to pay the tax liability described in the notification within two months after receipt of the notification, the Commissioner or authorised officer may, at the cost of the taxpayer, dispose of the property that is the subject of the restraint on disposal, mortgage, or charge, by public auction or private treaty, or as provided for under the relevant Act for the recovery of unpaid taxes provided that where a plan has been agreed between the taxpayer and the Commissioner, the liability shall be settled within the agreed payment plan before the notification by the Commissioner
- f) where the property is subject to a prior restraint, that prior restraint shall have priority if the property is disposed of.

The Act has also expanded the scope of properties that can be used as security to include ships, aircrafts, motor vehicles and any other properties that may be deemed sufficient to serve as security for unpaid taxes

The Commissioner shall notify the taxpayer or any other person who may have an interest in the property within 7 days of the use of the property as security. Subsequently the property shall be restrained from disposal, mortgage, or charge on the property to secure the amount of the unpaid tax until the unpaid tax is paid in full.

Extension of time on response to an agency notice

The Act has made the following changes to section 42 of the tax procedures Act.

The section empowered the commissioner to collect tax from an agent owing money to the taxpayer through a formal communication known as an agency notice.

- The number of days on which the agent should communicate to the commissioner on the inability to comply with the notice has been increased from 7 to 14.
- The Commissioner is also mandated to serve the taxpayer with a copy of a notice when serving the agent.
- Taxes demanded must have been confirmed through an objection confirmation and the Taxpayer has failed to lodge an appeal to the same.

Withholding VAT exemptions

The Act has amended section 42A (1) of the TPA to expand the scope of entities exempted from withholding VAT deduction to include manufacturers whose value of investment in the preceding three years from 1st of July 2022 is at least three billion”

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Amendments to provisions on tax overpaid

The Act has repealed section 47 of TPA to the effect that: Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner to utilise the refund to offset future tax liabilities or refund the tax overpaid within five years, or six months in the case of value added tax, after the date on which the tax was overpaid.

The commissioner must ascertain the taxes overpaid within 90 days. In the process of ascertaining the validity of the application the commissioner may subject the application to an audit. However, where the commissioner fails to ascertain the refund application within 90 days the same shall be deemed ascertained and approved.

Where the overpaid taxes are due for refund, the commissioner will apply the overpayment in the following order—

- a) in payment of any other tax owing by the taxpayer under the specific tax law;
- b) in payment of a tax owing by the taxpayer under any other tax law
- c) any remainder shall be refunded to the taxpayer.

Where the Commissioner fails to refund the overpaid tax within the period specified, the amount due shall attract interest of 1% for each month or part thereof during which the amount remains unpaid.

The Act also clarifies that overpaid installment taxes can be utilized against future instalment tax liabilities without subjecting the amount to a refund process. However, in the event commissioner determines that there was no overpayment of instalment tax, the amount of the tax that was used to offset the taxpayer's future instalment tax liabilities shall be treated as a tax due to the Commissioner in the subsequent tax period. The due date is the date that the Commissioner applied that amount to offset an instalment tax liability.

Refund of tax paid in error

TPA is amended in section 47 by adding section 47A and 47B. The provisions mandate the commissioner to refund the tax paid in error after ascertaining the taxes ought not to have been paid and that the tax cannot be utilized to offset any other outstanding liabilities current or future (the provisions for refund of tax under section 47 are applicable)

Upon approval by the Cabinet Secretary, the commissioner may 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.

Objection to tax decisions

The Act has amended section 51 of TPA to effectively to require the commissioner to acknowledge to the taxpayer in notice that the objection is validly lodged within 14 days after the day objection is lodged.

Further the Act seeks to compel the Commissioner to consider a taxpayer's application for extension of time to file an objection decision before deciding on whether grant the taxpayer the extension of time. In doing so the Commissioner shall within 14 days of application notify the taxpayer on the decision to grant a time extension or not.

The amendments also compel the commissioner to issue objection decision within 60 days from the date of receipt of a valid notice of objection.

Our comments

This comes as a reprieve to the taxpayers as the commissioner has always been reluctant in responding properly and within set timelines with respect to the objections lodged.

Effective date: 1 July 2022

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Clean up on Income Tax Act definition

- After the 2nd schedule was repealed with the Tax laws amendment Act of 2020 which removed the definition of Agricultural Land, the Finance Act proposes to remove the reference of the same in section 15(l) of the ITA.
- For investment allowance purposes Any person generating electrical energy for supply to the national grid, or the transformation and distribution of electricity will claim an investment allowance of 50% in the first year of use and 25% per year on a straight-line basis of the residue value whether or not the produced energy is supplied through the national grid.
- With respect to Section 15, expenditure incurred in the purchase or acquisition of an indefeasible right to use a fibre optic cable by a telecommunication operator will no longer be allowable for tax purposes. This amendment now aligns with the amendments brought forth by the Finance Act, 2021 which introduced an investment allowance of 10% per year (effective 1 January 2022) on purchase or acquisition of an indefeasible right to use a fibre optic cable by a telecommunication operator
- The finance Act has deleted section 15 (2) (y). This was a duplication of investment allowance relating to fibre optic to align it with the provision of investment allowance under the second schedule of the ITA
- The Act substitutes the words 'him, his life and his wife' with the words, 'the individual, the individual's life and the individual's spouse' respectively with respect to persons making payment for life insurance.

Effective: 1st July 2022.



VALUE ADDED TAX

Reduction of VAT on liquified petroleum gas

The Act has reduced the VAT rate for liquid petroleum gas (LPG) including propane from 16% to 8%.

Our Comments

The increase in global oil prices has pushed the prices of LPG up and with increase in need for clean energy, the government had to offer a relief in terms of VAT rate reduction. This is a welcome move as it will be a reprieve to households to cushion them from high cost of living.

Effective: 1st July 2022.

Applicability of VAT on digital services

The Act has made changes by defining what constitutes a digital marketplace to mean an online platform, which enables users to sell goods or provide services to other users.

- In prior legislation this definition included online platforms that enables users to sell other property to be subjected to VAT. For VAT purposes, supplies are categorized into either goods or services.
- The amendment in effect also exempts digital market services from reverse VAT charge
- The Act has also exempted persons supplying imported digital services over the internet or an electronic network or through a digital marketplace from the requirement to register for VAT if making taxable supplies amounting to KShs 5 million in per annum.

Our Comments

The definition of a Digital marketplace has made it clear on the persons subjected to Digital service tax. With clear definition of permanent home, the exemption from reverse VAT will also imply that VAT for all non-resident persons making taxable supplies to Kenya shall be required to register and account for VAT on any supply made to a person located in Kenya.

Claiming of input VAT

The Act sought to emphasize on claim ability of input VAT to the period in which the supply was made or importation of taxable supplies occurred (however does not revoke the provision to allow the deductibility of input tax within a period of 6 months after the end of the tax period in which the supply or importation occurred)

The Act has expanded the scope of documentation for the purpose of validating input VAT for Taxpayers participating in the Open Tender System (OTS). The OTS is for Oil Marketing Companies (OMCs) who participate in the supply of petroleum products to the Kenyan market and beyond. It will be now a requirement the custom entry form to show the name, Personal Identification Number (PIN) of the winner of the tender and the name of the other oil marketing company participating in the tender.

Our comments

The increase in scope of documentation is a measure by the commissioner ensuring that all VAT claimable by (OMS) was paid to curb tax cheats on the import of oil.

Refund of excess input tax

Manufacturers who make taxable supplies to an official aid funded project will now be allowed to claim excess input tax VAT.

Clarification on imposition of penalties and interest on imported goods

The FA 2022 has clarified that penalties and interest will be applicable as per the provisions of the Tax Procedures Act ("TPA") in respect to noncompliance of to import duty duties administration. The penalties

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and interest will however not exceed the principal tax.

Refund of tax paid in error

With the introduction of regulations to govern the refund of any tax paid in error. In the provisions, the Commissioner shall only refund any tax paid in error only if the tax cannot be used to offset against any current or future tax liabilities.

The amendment in the Act further provides that the Commissioner may, upon approval by the CS, refund VAT paid in error where a taxpayer's application for exemption or zero rating was not processed within 6 months.

VAT Tax Incentives and Exemptions

For the purpose of attracting investors and spur local manufacturing and investments the following supplies have been exempted from VAT.

- inputs used to manufacturer bioethanol vapour (BEV) stoves classified under tariff number 7321.11.00 (cooking appliances and plate warmers for liquid fuel).
- fuel pellets for household and commercial use from VAT. Previously, the VAT exemption only applied to fuel briquettes
- plant and machinery used by manufacturers of pharmaceutical products from VAT.
- medical oxygen supplied to registered hospitals, urine bags, adult diapers, artificial breasts and colostomy or ileostomy bags for medical use.
- inputs and raw materials used in the manufacture of passenger motor vehicles. Further, locally manufactured passenger motor vehicles will be exempt from VAT with effect from 1 July 2022.
- VAT exemption on taxable goods, inputs and raw materials imported or locally purchased by a company engaged in business under a special operating framework arrangement with the Government and incorporated for purposes of undertaking the manufacture of human vaccines (however the incentive is only applicable to accompany whose capital investment is over 10 billion and with the approval of the cabinet secretary for health).
- VAT exemption on capital goods incurred by manufacturers where the capital investment is KShs 2 billion or more.

Export of Taxable supplies

- Export of taxable supplies have been removed from exempt services. This means that the services will be vatable at a general rate of 16%
- Exportation of taxable services in respect to business process outsourcing (BPO) will now be zero rated. Any other services exported out of Kenya, which is not BPO in nature, will be subject to VAT at the rate of 16%.

Our comments

The move to zero rate the exportation of taxable service in respect of business process outsourcing (BPO) is a welcome move. However, in so doing the Act has not defined or clarified what kind of services constitutes BPO. In view of this, we expect the Commissioner to provide guidelines to clarify or else we anticipate there will be a lot of litigations with KRA due to varied interpretation of what business would constitute BPOs.

Effective date: 01 July 2022

EXCISE DUTY

Inflation adjustment by adjusting excise duty on commodities

Given the prevailing economic hardship The Finance Act 2022 (the Act) has amended the Excise Duty Act to allow the Commissioner by notice through the Kenya gazette and by approval of the cabinet secretary treasury to exempt specific products from inflation adjustment. In contrast to previous legislation where the commissioner could do that once in a year but did not have express powers to exempt any product from inflation adjustments

Our Comment

This is a welcome movement as the amendments will cushion Kenyans from the skyrocketing high cost of living by adjusting cost of products from time to time.

Eff: 1st January 2023

Imposition of penalties and interest on importation of excisable goods

The Act has amended the Excise Duty Act to clarify on administration of penalties and interest on importation of excisable goods into Kenya. The penalties and interests will now be administered as per the provisions of the Tax Procedures Act, 2015 (TPA) (the interest will be capped not to exceed the principal tax)

Amendment of excise duty rates

- a) The Act has amended to exclude charging excise duty on local raw materials of unsaturated polyester of tariff 3907.91.00, Alkyd of tariff 3907.50.00, Emulsion VAM of tariff 3905.91.00, Emulsion - Styrene Acrylic of tariff 3903.20.00, Homopolymers of tariff 3905.19.00 and Emulsion B.A.M of tariff 3906.90.00 at the rate of 10%. This means now that the Excise Duty of 10% will only apply on the importation of the above raw materials.

Our comment

This is in line with encouraging the local production of the above raw materials in Kenya.

- a) electronic cigarettes and other nicotine delivery devices. Currently, the excise duty rates for electronic cigarettes and cartridges is KShs 3,974.08 per unit and KShs 2,649.74 per unit respectively. The Act has replaced this with an excise duty rate of 40% for electronic cigarettes and KShs 70 per millilitre for liquid nicotine for electronic cigarettes.

Our Comment

The move is aimed at regulating the consumption of cigarettes as a harmful substance. The move will also increase revenue collection for the government while

- a) The Act has introduced excise duty at a rate of 20% on fees charged by digital lenders

Our comment

The move is to regulate and cushion borrowers from exorbitant digital lenders, and in turn increase revenue to the government.

- a) The Act has introduced excise duty on importation of cellular phones at a rate of 10% of the excisable value.

Our comment

This will in turn increase cost of cellular phones.

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Exemptions from Excise duty.

The Act has amended the Excise Duty Act to exempt the following supplies from excise duty

- Exemption of betting on horse racing from excise duty.
- Exemption from excise duty upon approval by the Commissioner of neutral spirit imported or purchased locally by registered pharmaceutical manufacturers.
- The Act has exempted locally manufactured passenger motor vehicles from excise duty.
- The Act has from excise imported furniture of any kind used in offices, kitchen, bedroom and other furniture from excise duty.

The following changes have been made on the Excise duty rates

Item	Before amendment	After amendment
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 litre	KShs.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%	KShs.121.85 per litre	KShs. 134 per litre
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	KShs. 208.2 per litre	KShs. 229 per litre
Spirits of undenatured ethyl alcohol; spirits, liqueurs and other spirituous beverages of alcoholic strength exceeding 6%	KShs. 278.7 per litre	KShs.335.3 per litre
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	KShs. 13,906.04 per kg	KShs. 15,296.6 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 and 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

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Imported white chocolate, chocolate in blocks, 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
Jewelry 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
Articles of plastic of tariff heading 3923.90.90	-	10%
Imported potatoes of tariff numbers 0710.10.00, 2004.10.00 and 2005.20.00	-	25%
Imported ready to use SIM cards	-	Kshs. 50 per SIM card
Electronic cigarettes and other nicotine delivery devices	KShs 3,974.08 per unit	40%
Liquid nicotine for electronic cigarettes	KShs 2,781.43 per unit	KShs 70 per milliliter

Changes to the Miscellaneous Fees and Levies Act

The Act introduced several changes to the miscellaneous Fees and Levies Act as highlighted.

Approval of reduced Import Declaration Fees (IDF) and Railway Development Levy (RDL)

The Act has been amended Section 72A and 82A of the Miscellaneous fees and levies Act and by providing that reduced IDF and RDL rates of 1.5% on importation of raw materials and intermediate products by manufacturers shall apply upon recommendation to the commissioner by the cabinet secretary at that time relating on matters of that specific industry.

Our Comments

This is to simplify the process of seeking approval of IDF and RDL rates. This will in turn encourage manufacturers to take advantage of the incentives.

Also, the reduced rates of 1.5% on inputs for the construction of houses under the affordable housing scheme shall also apply upon recommendation to the commissioner by the cabinet secretary at that time relating to housing.

Our Comments

This is to simplify the process of seeking approval of IDF and RDL rates. This will in turn encourage investors to take advantage of the incentives.

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Penalties and interest on unpaid refunds arising from excess levies and fees

The Act has aligned applicability of interest on unpaid refunds as per the TPA. This means that unpaid refunds for miscellaneous fees and levies which remains unpaid for a period exceeding two years will attract 1% interest per month.

Effective date: 1st July 2022

Introduction of export levy

The Act has amended Part I first schedule of the Miscellaneous fees and Levies Act to introduce an export levy on iron ores and concentrates, including roasted iron pyrites of tariff number 2601 at a rate of USD 175 per tonne.

Effective: 1st July 2022

Inflation adjustment date

The Act seeks to introduce the date of inflation adjustment to a date not later than the 1st of October of every financial year. In prior legislations the adjustment was done at the beginning of the government's financial year that is 1st of July every year.

Goods Exempted from Import Declaration Fees (IDF) and Railway Development Levy (RDL).

The following goods and services have been exempted from IDF and RDL

- inputs and raw materials imported by manufacturers of pharmaceutical products on the recommendation of the Cabinet Secretary responsible for matters relating to 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
- b.
- c. 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.



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How we can assist

Bakertilly can assist you to identify which areas of your business will be affected by the law changes provided under the Act. Furthermore, we can offer advisory services on tax planning to make the most of the tax incentives provided as well provide awareness to avoid penalties that may arise due to omissions considering requirements by the law.

Get in touch.

Should you require more information or wish to discuss this further, please do not hesitate to reach out to any of our contacts at Bakertilly or kindly contact the team below:

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