FINANCE BILL 2021

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pesa zetu, haki yetu

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

Income Tax Act (Cap 470)

Section	Finance Bill 2021	Effective date	Impacts
2 (a) Definition of **Infrastructure bond**	"infrastructure bond" means a bond issued by the Government for the financing of a strategic public infrastructure facility including a road, hospital, port, sporting facility, water and sewerage system, or a communication network;	1st July 2021	This definition is a welcome move as it provides clarity of the nature of infrastructure the Government intends to construct using the proceeds of the infrastructure bonds.
2 (b) Deletion of the definition of **permanent establishment (PE)**	The definition of a **permanent establishment** has been deleted and substituted to include: a) A fixed place of business through which a business is carried on; b) A building site, construction, assembly or installation project or any supervisory activity, provided that the same continues for more than 183 days; c) Provision of services including consultancy services through employees or other personnel where those services continue for more than a period exceeding in	1st July 2021	This proposed new definition is much wider than the current definition in the ITA as it now provides various scenarios as to when a permanent establishment is deemed to be created in Kenya. Similarly, the new definition has also provided some clarity in the scenarios that do not result in a permanent establishment. Consultants providing services on behalf of non-residents and players in the extractive industry will now result in a PE within 91 days, about half the time provided in the current Act. The new definition also introduces other activities such as a warehouse, farm, plantation and a sales outlet.

	aggregate, 91 days in any twelve month period; d) An installation or structure used for exploration of natural resources provided that such activity continues for a period of 91 days or more; and e) A dependent agent of a person acting on behalf of the principal in respect of activities undertaken in Kenya including habitually concluding contracts or playing a material role in the conclusion of contracts that are routinely concluded without material modification.		
3 (a) and (b) Additional Provisions for **Digital marketplace**	The Bill proposes to impose income tax on income accruing from businesses carried out over the internet or an electronic network, including through a digital marketplace. The Bill proposes a new definition for a digital marketplace. A **"digital marketplace"** will mean an online platform which enables users to sell or provide services, goods or other property to other users.	1st July 2021	This will bring into the equation those businesses that are conducted through the internet without employing online platforms. This will bring into the ambit of taxation, merchants who use social media platforms to market their products and services and generate income from such an activity.
12 E Persons liable for DST	a) The Bill proposes to limit the imposition of the digital service tax (DST) to non-resident persons only.	1st January 2022	This provision will offer relief to residents who are already subject to tax on the income that they derive from the digital platforms.

	b) A person subject to digital service tax shall submit a return and pay the tax due to the Commissioner on or before the twentieth day of the month following the end of the month in which the digital service was offered.		The provision aligns the regulations to the Income tax provision.
12 E (c) DST Exemptions	The Bill proposes to exempt non- resident businesses that transmit messages via cable, radio, fiber, TV broadcasting, VSAT, internet, satellite or other such methods of communication from DST and if the income is subject to withholding tax.	1st January 2022	This proposal will offer relief to businesses in the communications sector as well as persons who receive income that is subject to withholding tax.
31 of ITA, (subsection 1); introduction of NHIF relief as **"Insurance relief"**	The Bill proposes to extend insurance relief to include National Health Insurance Fund (NHIF) contributions.	1st January 2022	The proposal is a good move as it would cover a majority of Kenyans who pay NHIF contributions but are unable to enjoy the insurance relief afforded on premiums paid to other life insurance schemes. The proposal would also lead to higher net pay for employees due to the insurance relief being applied on NHIF contributions deducted through the payroll.
39 B , subsection 1; expansion of tax rebates for apprenticeship	Section 39B of the Income Tax Act is amended in subsection (1) by inserting the words "or technical and vocational education and training" immediately after the word "university". - The Bill proposes to expand the category of graduates to include graduates from technical and	1st January 2022	This will increase the pool from which employers can draw apprentices and still qualify for tax rebates. This also aligns with the current emphasis on technical and vocational training to solve the unemployment problem and also serve as an encouragement for students to enroll in these institutions.

	vocation education centers.		
41 (5) , **Double taxation limitation**	The Bill proposes to amend the provision to expand the ineligibility of the double taxation relief to include persons (not individuals as previously was the case) deriving income from Kenya whose ultimate ownership lies with a non-resident person(s). A definition of a person includes an individual, company, partnership, trust, government, or similar body or association.	1st July 2021	

VAT Act (2013)

Section	Finance Bill	Effective Date
5 (7) **Inclusion of DST**	The provisions of subsection (1) shall be applicable to supplies made **over the internet or an electronic network or** through a digital marketplace.	1st July 2021
5 (9) **Definition of a digital marketplace**	Digital marketplace means an online platform which enables users to sell or provide services, goods or other property to other users.	1st July 2021
67 (2) **Deleting the clause that requires parliament's approval before effecting regulations by the CS**	This shall give unchecked powers to the CS to come up with regulations on the application of the Act without Parliament's approval	1st July 2021
Part I, Section A, First Schedule: **Amendments to VAT Exemptions**	1. To reclassify the following supplies from standard rate 16% to exempt rate: • Protein concentrates and textured protein substances. • Food preparations specially prepared for infants, Other - Food preparations not elsewhere specified or included • Vitamin C and its derivatives • Other medicaments, containing alkaloids or derivatives containing norephedrine or its salts Other, containing antimalarial active principles. • Food supplements • Malaria diagnostic test kits • Orthopaedic or fracture appliances	1st July 2021

Part II : Supply of services exempted from VAT	• Other artificial parts of the body: Pacemakers for stimulating heart muscles, excluding parts and accessories • 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 breathing appliances and gas masks, excluding protective masks having neither mechanical parts nor replaceable filters upon approval by the Cabinet Secretary responsible for matters relating to health. • Medical ventilators and the inputs for the manufacture of medical ventilators upon recommendation by the Cabinet Secretary responsible for matters relating to health • **S.32.**The exportation of taxable services. • **S.33** The transfer of assets and other transactions related to the transfer of assets into real estate investment trusts and asset-backed securities.	
Second Schedule **S. 13A: Ordinary Bread**	The Supply of ordinary bread is removed from exempted commodities and it shall attract a 16% VAT	1st July 2021

Excise Tax Act (2015)

Section	Finance Bill 2021	Excise Duty Act	Implication	Effective Date
Tariff heading 17.04	The bill proposes an excise duty of Shs. 20 per kg on sugar confectionary	The Bill has proposed to amend the paragraph by deleting the word 'imported' which means that both locally manufactured and imported sugar confectionary and chocolate will be subject to excise duty	The proposed amendment will eliminate the competitiveness of the local confectionary industry against imported confectionary as the retail prices will increase due to the excise duty cost that will be passed to final consumers. This will reverse the gains that the Government had made in promoting the local food processing and manufacturing sector.	1st July 2021
Tariff Nos. 1806.31.00, 1806.32.00 and 1806.90.00	White chocolate, chocolate in blocs, slabs or bars to attract excise duty of Shs. 200 per kg.			1st July 2021
	Excise duty of 25% on imported glass bottles (excluding imported glass bottles for packaging of pharmaceutical products) has been removed, meaning glass bottles can now be imported without attracting any excise duty.	Excise duty on imported glass was first introduced by the Business Laws (Amendment) Act, 2020, which amended the First Schedule to the Excise Duty Act, 2015, by imposing duty at 25%.	The manufacturers who package their products with glass bottles will benefit more from this amendment and they will rely heavily on imported glass.	1st July 2021
Tariff 87.11	Motor cycles, other than motor cycle,	A flat rate of Shs. 11,608.23 per unit	This will discourage	1st July 2021

	ambulances and locally assembled motor cycles will now attract duty excise duty at the rate of 15% of the excisable value	were previously charged on motor cycles & ambulances	companies from purchasing motor cycles & ambulances which are not locally assembled due to increase in prices. The local companies that locally assemble the motorcycles will stand to benefit. This will also promote employment and manufacturing sector which is among the Big 4 Agenda.	
Tariff heading 7113, 7117	Imported Jewelry of the 2-tariff heading to attract an excise duty of 10%.	NIL	The introduction of excise duty on jewelry will generate additional revenue for the Government in the form of sin taxes.	1st July 2021
	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 to attract an	NIL	The cost will discourage consumption and purchase & these products.	1st July 2021

	excise duty of Shs. 5,000 per kg.			
	The bill re-introduces Excise duty of 20% on betting.	This was introduced by Finance Act, 2019, but deleted by the Finance Act, 2020.	Imposing sin taxes on Betting due to the effects that betting has on the youth in Kenya.	1st July 2021
	Interest on loans, fees or commission earned in respect to the loans shall now not attract excise duty of 20%. Other fees are defined to include any fees, charges or commissions charged by financial institutions relating to their licensed activities but does not include "… fees or commissions earned in respect of a loan".	Other fees had not been defined in the excise Duty Act as indicated below; Excise duty on other fees charged by financial institutions shall be twenty percent of their excisable value. [Act No. 10 of 2018, s. 32 (b)(iv).]		1st July 2021

Tax Procedures Act (2015)

Section	Proposed Change	Implication	Effective date
6B Common Reporting Standard	The Bill has proposed to introduce provisions relating to Common Reporting Standards (CRS) obligations by financial institutions located in Kenya on exchange of financial account information in tax matters as part of the efforts employed by Kenya to join global tax transparent jurisdictions for the exchange of information on foreign accounts for tax purposes.	Kenya will be required to provide a list of jurisdictions with respect to which it intends to exchange information and put in place domestic laws to implement the CRS.	**1st July 2021**
Section 23 Limitation Period for Tax Assessments Increased	The Bill has proposed to increase the period within which the Commissioner may amend a tax assessment from five years to seven years.	The Commissioner will be permitted by law to investigate the affairs of a taxpayer within seven years from the date the Commissioner serves notice of intention to audit the tax affairs of a taxpayer.	**1st July 2021**
Section 35 KRA pin for digital transactions	The Bill has proposed to amend the Tax Procedures Act 2015 to require transactions that involve supply of goods and services over a digital marketplace to require a tax person identification number (PIN) of the customer.	This move is likely to increase the compliance burden for non-resident suppliers of electronic services.	**1st July 2021**

Miscellaneous Fees and Levies Act

SECTION	Finance Bill	Effect on Finance act	Effective Date
43. Sec 9A	9B. The provisions of section 47 of the Tax Procedures Act, 2015 shall apply for the purposes of— (a) an application for refunds, ascertainment and repayment of fees and levies overpaid or paid in error under this Act; or (b) the determination by the Commissioner of penalties and interests on fees that remain unpaid	The current Miscellaneous fees and levies Act has not provided for a refunds mechanism to taxpayers in case of overpaid fees and levies or those paid in error. The Bill has proposed to introduce an application of the provisions of section 47 of the Tax Procedures Act, 2015 as relates to application for refund of overpaid tax or tax paid in error. Further the Bill provides that section 47 of the TPA shall also apply for the purposes of determination by the Commissioner of penalties and interest on fees that remain unpaid. If the Bill is passed into law, this proposed change shall come into effect from 01 January 2022	1st January 2022

44, Part A	Amendment of the Second Schedule to No. 29 of2016. in Part A, by inserting the following new item immediately after item (xxv)— (xxvi) such other goods the exemption of which the Cabinet Secretary may determine is in the public interest, or to promote investment and the value of which shall not be less than five billion shillings. (b) in Part B, by inserting the following new item immediately after item (ix)— (x) such other goods the exemption of which the Cabinet Secretary may determine is in the public interest, or to promote investment and the value of which shall not be less than five billion shillings	Previously, goods as the CS may determine are in public interest, or to promote investments whose value shall not be less than two hundred million shillings were exempt from IDF and RDL. However, this provision was deleted by the Finance Act, 2020 which came into effect on 30 June 2020. The Bill has proposed to exempt from IDF and RDL, such other goods the CS may determine their exemption is in the public interest, or to promote an investment and the value of which is five billion shillings or more. Goods valued at five billion shillings or more imported in the interest of the public or to promote an investment shall be exempt from IDF and RD	1st July 2021

Miscellaneous

SECTION	FINANCE BILL	EFFECT ON THE ACT	EFFECTIVE DATE
45. Sec 35 A	35A of the Capital Markets Act is amended by deleting subsection (17) and substituting therefore the following new subsection. (17) The Tribunal shall hear and determine an appeal within ninety days from the date of filing of the appeal.	The Bill proposes to introduce a time limit of 90 days (from the date of filing of the appeal) for the hearing and determination of appeals at the Capital Markets Tribunal. The limitation is intended to bring certainty with regard to the end of litigation, improving efficiency at the Tribunal and ensuring fair administrative action. However, the amendment is silent on whether status quo of a matter will continue pending determination of an appeal by the Capital Markets Tribunal.	1st July 2021
46. Sec 2 47. Sec 20	Insurance Act is amended by deleting the definition of "broker" and substituting therefor the following new definition— "broker" means an intermediary involved with the placing of insurance business with an insurer or reinsurer for or in expectation of payment by way of brokerage commission for or on behalf of an insurer,	The current finance act definition excludes foreign reinsurance brokers. The Bill proposes to amend the definition of a broker to include insurance and reinsurance brokers that do not have a place of business, or a resident representative in Kenya but still carry out brokerage business in Kenya. This will bring foreign brokers that carry out business in Kenya within the regulation of the Insurance Act.	1st July 2021 1st July 2021

	policyholder or proposer for insurance or reinsurance and includes a medical insurance provider. Section 20 of the Insurance Act is amended by deleting subsection (3).		
48	48. The Insurance Act is amended by inserting the following new section immediately after section 21— 21A. (1). In this section, "closed fund business" means the continuance of insurance business for the purpose of maintaining, without renewal, any policy or contract of insurance issued before the appointed date. (2) Subject to sections 10 and 123(1)(b), an insurer may carry on closed fund business without registration under section 19. (3) Where the policy or contract of insurance remains	The Bill also seeks to introduce closed fund business i.e. "the continuance of insurance business for the purpose of maintaining, without renewal, any policy or contract of insurance issued before the appointed date." The Commissioner of Insurance will have the power to request for information from any insurer carrying on closed fund business and such information ought to be provided within 3 months. An annual fee has been introduced for licensed insurers. It however remains to be seen what the prescribed amount will be. This is similar to the approach adopted in the banking industry where licensees have an	1st July 2021

	unpaid or undischarged, all the provisions of this Act shall apply to that insurer unless the Minister, in writing, specifically exempts the insurer from any of the provisions of this Act.	evergreen licence but are required to pay an annual fee.	
49. Sec 31	(4) The Commissioner may, by notice in writing served on the insurer carrying on closed fund business, require the insurer to furnish the Commissioner within a period not exceeding three months the particulars of the insurance business in Kenya as the Commissioner may specify in the notice.		
50. Sec 5A	(5) A person who contravenes the provisions of subsections (2) and (3) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings and, if the offence is a continuing one, to a further fine of ten thousands shillings for each day during which the offence continues.		
51. Sec 2			

	(6) The penalty imposed under subsection (5) shall be paid into the Policyholders Compensation Fund. (7) A person shall not dispose of any assets from a closed fund except with the prior approval of the Commissioner. 49. Section 31 of the Insurance Act is amended by adding the following new subsection immediately after subsection (2) (3) An insurer issued with a license under this Act shall pay the prescribed annual fee. 50. Section 5A of the Kenya Revenue Authority Act, 1995 is amended in subsection (2)— (a) by deleting the words "one hundred thousand" appearing in paragraph (a) and substituting therefor the words "five hundred thousand"; (b) by deleting the words "two million" appearing in paragraph (b) and	The Retirement Benefits Act currently only envisages individual trustees as trustees of scheme funds. The amendment is intended to also allow for corporate trustees. Trustees will have an option to seek an extension of time for the submission of audited accounts of the scheme to the Retirement Benefits Authority and the application for extension for a period not exceeding 3 months will be granted upon justification. The Bill also proposes to amend the definition of "retirement benefits scheme" to include post-retirement medical cover as a benefit. To give this effect, a "post-retirement medical fund" has been defined to mean a fund established within a scheme into which contributions are made and from which the costs of medical benefits can be met as may be determined in accordance with the	

64. sec 30	substituting therefor the words "five million" 51. Section 2 of the Retirement Benefits Act is amended— (a) in the definition of "retirement benefits scheme", by inserting the words "or post-retirement medical cover" immediately after the words "form of payments"; b) by inserting the following new definitions in their proper alphabetical sequence— No. 17 of 2015. "corporate trustee" means a limited liability company incorporated under the Companies Act, 2015, which is, for the time being, empowered under any written law, its charter, memorandum of association, deed of settlement or other instrument constituting it or defining its powers to mainly undertake trusts, and includes a trust corporation; "post-retirement medical fund" means a fund established	medical fund rules. This is intended to provide medical cover to retirees and mitigate the burden of out of pocket medical expenses during the retirement period. Corporate trustees will now be registered and regulated under the Retirement Benefits Act. The Bill proposes to introduce a definition of a "corporate trustee" to refer "a limited liability company incorporated under the Companies Act, 2015, which is, for the time being, empowered under any written law, its charter, memorandum of association, deed of settlement or other instrument constituting it or defining its powers to mainly undertake trusts, and includes a trust corporation." Further the Bill provides for the requirements to be met by applicants to be registered as corporate trustees. An example of such requirements include meeting a minimum paid up capital that shall be prescribed by the Retirement Benefits Authority and not having been a corporate trustee of any scheme fund which has been deregistered,	

	within a scheme into which contributions are made and from which the costs of medical benefits can be met as may be determined in accordance with the medical fund rules	wound up or placed under interim administration due to any fault, either fully or partially, of the corporate trustee	
	Section 30 of the Central Depositories Act. Amendment of section 30 of No. 4 of 2000	Under the Central Depositories Act, 2000, the Bill proposes to allow beneficial owners or legal owners of shares to appoint nominees for the purpose of opening a securities account or an omnibus account. This is intended to allow other authorized persons to invest on behalf of others in the securities market.	