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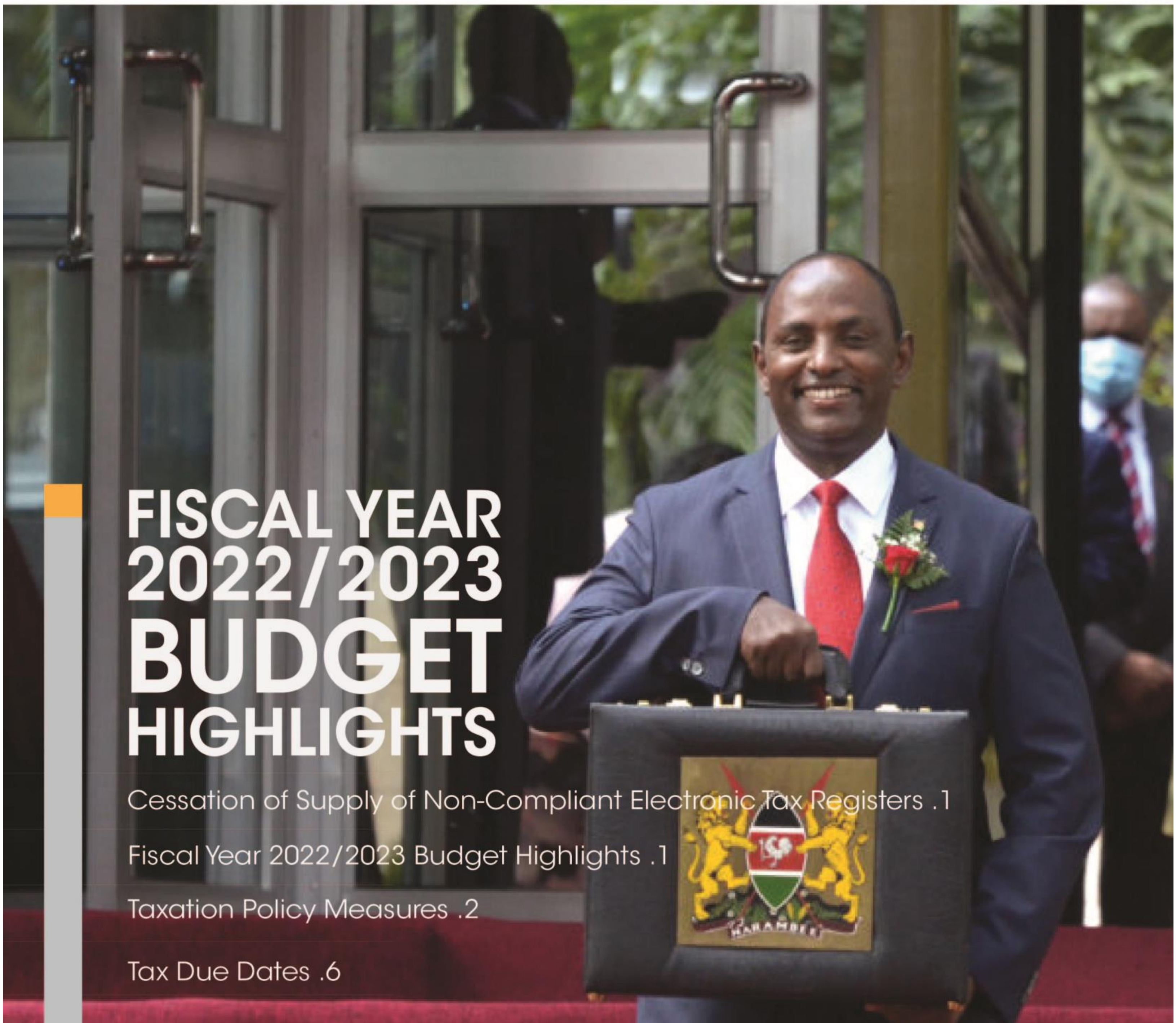

FISCAL YEAR 2022/2023 BUDGET HIGHLIGHTS

Newsletter

MBAYA AND ASSOCIATES April 2022 | Issue 082 | Volume 8

Introduction

Warm greetings from all of us at the M&A family. We are pleased to release our fourth edition of the year 2022 tax newsletter. The newsletter covers the Tax Invoice Management System (TIMS) and summarizes the key aspects of the 2022/2023 National Budget as read by the Cabinet Secretary, Ministry of Finance and National Treasury Hon. Ukur Yatani on Thursday, 7th April 2022.

We are grateful for your interaction and are eager to be of service to you.

On the right column of the newsletter, you will find contact details for the senior members of our team who can help answer any questions you may have about the issues highlighted in this newsletter or any other matter.

We are interested in your feedback on the items covered and what topics you would like covered in the future. Please provide any feedback at tax@mbaya.co.ke.

In this issue

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Table of Contents »

» From the Tax**Desk** »

Cessation of Supply of Non-Compliant Electronic Tax Registers

KRA wishes to remind suppliers of Electronic Tax Registers (ETRs) and VAT registered taxpayers that the supply of ETRs that are not complaint with the Value Added Tax (Electronic Tax Invoice) Regulations, 2020 was discontinued effective 15th January 2022 as per the Public Notice of 23rd November 2021 on the "Requirements for Uptake of Electronic Tax Invoice". This information has been affirmed by a public notice issued on 9th March 2022 where any person found supplying non-complaint ETRs shall be liable to penalties as prescribed in the law. KRA takes this opportunity to thank all VAT registered taxpayers who are complying with the requirement to generate and transmit electronic tax invoices to KRA in line with the Value Added Tax (Electronic Tax Invoice) Regulations, 2020.

Ukur Yatani holding the 2022/23 Budget (Photo Source: Capital News at capitalfm.co.ke)

Fiscal Year 2022/2023 Budget Highlights

The theme of the FY 2022/2023 budget presented by the National Treasury & Planning Cabinet Secretary on 7th April 2022 was "Accelerating Economic Recovery for Improved Livelihood".

Fiscal Policy

While the expenditure of this budget is focused on economic stimulus and the enhancement of the Big Four Agenda, the implementation of these pillars was highly affected by the Covid-19 pandemic

Taxation Policy Measures

a) Income Taxes

The budget proposed the following measures:

- **Tax deductibility on all donations to charitable organizations**: Section 5 (2) (w) of the Income Tax Act to be amended by allowing all entities that make donations to charitable organizations to deduct such donations from their taxable income. These donations have previously been deductible only when incurred to charitable organizations registered under the NGO Coordination's Act and the Society's Act.

Merits: This is a welcome move to businesses that make charitable donations to unregistered organizations, as these donations will be tax deductible and hence reducing the taxable profit.

Demerits: This regulation could be open to abuse by taxpayers since there is no proper definition as to what entails donations. More regulations will need to be published to regularize and detail the qualifications for such donations.

- **Exemption of microfinance institutions registered under the Microfinance Act from Thin capitalization**. The CS seeks to harmonize the financial sector by amending the ITA to exclude banks under the Microfinance Act from restrictions of thin capitalization rules. We note that these institutions were not included last year in the list of the exempted bodies under the thin capitalization rules.

Merits: This is a welcome move as these institutions will claim the entire interest expense on borrowings. In the long run, this will spur economic growth across especially in the micro finance institutions.

Demerits: This will lower tax revenue enjoyed by the government in this sector.

- **Taxation on profits accruing to non-resident persons from financial derivatives**: this is mainly Income Tax on profits accruing to non-resident persons who trade in financial derivatives. The derivative market is currently untaxed despite its growing prominence in the recent years. This is a proposal clouded by a seeming desperation to tax every gain by non-resident persons.

Merits: This is a welcome effort by the government to widen the tax base.

Demerits: The move will curtail developments made in the financial sector, and more specifically the Nairobi Stock Exchange in the last three years.

- **Taxation of multinational enterprises**: Kenya is one of the states that signed the multilateral agreement for Mutual Administrative Assistance in Tax Matters. This enables the automatic exchange of information on tax matters amongst jurisdictions that are signatory to the Convention. This therefore means that the multinational companies established in Kenya are supposed to declare their group activities to the Commissioner of Domestic Taxes.

Merits: This proposal indicates the Government's commitment and increased efforts to safeguard the tax base through prevention of profit repatriation and shifting of profits to low tax jurisdictions. The move will also help to achieve transparency through the exchange of information between different jurisdictions

Demerits: The affected organizations will have to keep proper books which will be subject to review by KRA which could be costly to them in due time.

b) Value Added Tax (VAT)

From the budget highlights, various items were exempted from VAT as below.

	Item	Current Rate	Proposed Rate	Comments
1	Raw materials for the manufacture and sale of locally assembled passenger motor vehicles.	16%	Exempt	This will reduce the cost of acquiring/ importing raw materials necessary for manufacturing and assembly of motor vehicles and hopefully encourage more people to invest in this sector.

	Item	Current Rate	Proposed Rate	Comments
2	Plant & Machinery for Pharmaceutical Production	16%	Exempt	This proposal seeks to incentivize manufacturers of pharmaceutical products in the health industry as some of the lessons learnt from the Covid-19 pandemic. The move provides relief to new entrants and existing players in the health sector.
3	Supply of: Medical Oxygen supplied to registered hospitals, urine bags, adult diapers, artificial breasts, colostomy or ileostomy bags for medical use.	16%	Exempt	This is a welcome move that will ease the access of these essential supplies in the medical sector as well as ease the costs of these supplies to the public.

c) Excise Duty

From the budget highlights the Commissioner shall be empowered to exempt specific products from inflation adjustment given the prevailing economic environment.

Currently, the Commissioner can only adjust the specific rates of Excise Duty by notice in the Gazette with the approval of the CS once every year to take into account the inflation. However, the Commissioner does not have express power to exempt any product from inflation adjustment.

This is a comforting for Kenyans since it will enable the Commissioner to exempt certain products from the inflation adjustment hence cushioning Kenyans against the hard economic times and high cost of living. The other excise duty changes are as follows:

	Item	Current Rate	Proposed rate	Comments
1	Eggs	25%	Exempt	This will reduce the cost of living by reducing the cost of importation and increasing the supply of eggs by registered hatcheries in Kenya.
2	Neutral Spirit	25%	Exempt for pharmaceutical companies	This is a reprieve to manufacturers of pharmaceutical products as it will reduce cash flow uncertainties brought about by delayed refunds.
3	Advertisement fees for: Gambling, Gaming & Alcohol Promotion	N/A	15%	Known as 'sin tax'. Intended to curb the widespread of the adverts and the entire consumption of the services by making it much more expensive.

Liquid Nicotine: New tobacco products such as E-cigarettes have been slapped with an excise duty of Kshs. 70 per millilitre. This is in a bid to curb misuse of tobacco products by school going children and the youth.

Increase in Excise Duty by 10% on specific products: In the budget speech, the cabinet secretary alluded to increase in excise duty on various project through he did not give the specific list. This is with the exclusion of petroleum products which is a relief to citizens as this will cushion them from ever fluctuating upward rising of oil prices in the global markets.

d) Tax Procedures Act

Cap on the timelines for issuing an objection decision - The TPA provides that the Commissioner should issue a tax objection decision within 60 days from the date of filing a notice of objection. However, this has been exploited by KRA by a recount of another 60 days from the date the commissioner requests for additional records relating to the objection. The proposal that the Commissioner shall be bound to issue an objection decision within one cycle of 60 days upon receipt of a valid objection will make the cases to move faster without delays.

e) Kenya Revenue Authority Act

The proposal is to amend the KRA Act and rename the Kenya Revenue Authority (KRA) to Kenya Revenue Service.

This seems to have borrowed a leaf from one of our neighbouring country, Tanzania and this is with an intention to rebrand and transform the authority's public image and enhance its public relations with the taxpayers which in the long run will result to improved tax compliance. The amendment will also cover all tax laws that make reference to KRA.

It is the hope of many that the institution will live up to the new proposed rebranded name "service" by ensuring it adopts a service-oriented formation rather than the perceived authoritative form.

f) Tax Appeals Tribunal Act

In a bid to safeguard the disputed taxes, the CSs proposed to amend the Tax Appeals Tribunal Act 2013 by introducing a requirement for taxpayers to deposit 50% of the disputed tax revenue in a special account at the CBK when the Tribunal makes a ruling in favour of the Commissioner as the taxpayer proceeds to appeal the decision.

If this goes through and the final judgement at the high court is made in favour of the taxpayer, the tax deposited is refundable back to the taxpayer within 30 days from the date of the ruling.

This proposition is seen as a pay to play policy which have made a reference to one of our neighbouring country Uganda. The Uganda Revenue Authority, TAT Act Section 15 had a Pay to Play policy which required a taxpayer to pay 30% of the disputed tax before appealing though the policy was contested in court and found to be unconstitutional.

This proposal is punitive, unjust and not in the best interest of the taxpayers because it is engineered to discourage taxpayers from lodging appeals against KRA beyond the Tax Appeals Tribunal and this will be a major hindrance to seeking tax dispute resolution.

In addition, given that most businesses are recovering from the effect of the pandemic, it is likely that the taxpayers will encounter challenges in raising at least 50% of the disputed amount from their cash flows. Therefore, this will be punitive to the taxpayers as it raises the going concern issue on businesses.

g) Miscellaneous Fees and Levies Act

There are other matters as indicated on the Act as follows:

- The Exemption of Pharmaceutical Inputs from Import Declaration Fees and Railway Development Levy
- Reduction of Export Levy on Raw Hides and Skins

Tax Due Dates

Withholding Tax | 20th Day of the following month
Pay as You Earn | 9th Day of the following month
VAT | 20th Day of the following month
Balance of Tax on Self-Assessment | 4th Month after year end
Monthly Rental Income | 20th Day of the following month

Instalment Tax

1st Instalment |20th day of the 4th month after year end
2nd Instalment | 20th day of the 6th month after year end
3rd Instalment | 20th day of the 9th month after year end
4th Instalment | 20th day of the 12th month after year end
Kindly note that all the returns must be filed on I tax while the payments e-slips must be generated from the I-Tax platform.

Digital Service Tax (DST)

20th day of the following month

Minimum Tax

Applicable where minimum tax is higher than instalment tax payable
1st Instalment |20th day of the 4th month after year end
2nd Instalment | 20th day of the 6th month after year end
3rd Instalment | 20th day of the 9th month after year end
4th Instalment | 20th day of the 12th month after year end