



OVER 40 YEARS OF ACCOUNTING EXCELLENCE



Fiscal Year 2021/2022 Budget Highlights

Tax Due Dates .4



Newsletter

MBAYA AND ASSOCIATES

June 2021 | Issue 072 | Volume 7

Introduction

We are pleased to release the sixth edition of our tax newsletter.

We appreciate the lively feedback and fruitful engagement we have had in the previous editions of our newsletters.

This issue will summarize the key aspects of the 2021/2022 National Budget as read by Hon. Ukur Yatani on Thursday, 10th June 2021. We shall also highlight the 2021 Finance Bill 2021.

On the right column of the newsletter you will find contact details for key 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 any topics you would like to see featured in upcoming issues of the newsletter.

Please provide any feedback at tax@mbaya.co.ke

Photos (Cover, Page 1) Credit | standardmedia.co.ke

In this issue

...

Fiscal Year 2021/2022

Budget Highlights » 1

Contacts

Head Office

3rd Floor, Western Heights

Karuna Road, Westlands

P. O. Box 45390 – 00100

Nairobi, Kenya

Tel. +254(20)4443868

254 20 4448938

254 20 4446466

Fax: 254 20 4449819

Mike Mbaya | Managing Partner

Email: mike@mbaya.co.ke

Muhungi Kanyoro | Partner

Email: mkanyoro@mbaya.co.ke

Andrew Bulemi | Partner

Email: abulemi@mbaya.co.ke

Leah Nganga | Partner

Email: lwambui@mbaya.co.ke

Abner Fundi | Outsourcing Dept. Manager

Email: abner.fundi@mbaya.co.ke

Kevin Njenga | Tax Manager

Email: knjenga@mbaya.co.ke

Darlyn Mbaya | Manager and Partner

Savanna Associates

Email: darlyn@mbaya.co.ke

Table of Contents »

Fiscal Year 2021/2022 Budget Highlights	1
Fiscal Policy	1
Taxation Policy Measures	2
Income Taxes	2
Value Added Tax	2
Custom Duties	2
Excise Duty	3
Enhancing Tax Administration Procedures	3
Highlights of Finance Bill 2021	3
Proposed amendments to the Tax Procedures Act	4
Other proposed amendments are on the below tax heads	4
Tax Due Dates	4
Instalment Tax	5
Disclosure of Company Beneficial Ownership	5
Digital Service Tax (DST)	5
Minimum Tax	5



» From the *TaxDesk* »

Fiscal Year 2021/2022 Budget Highlights

The theme of the FY 2021/2022 budget presented by the National Treasury & Planning Cabinet Secretary, Hon. Ukur Yatani (above), on 10th June 2019 was "Building Back Better: Strategy for Resilient and Sustainable Economic Recovery and Inclusive Growth."

Fiscal Policy

The budget acknowledged that various tax statutes are amended annually during the budget process, creating uncertainty in tax legislation. A draft National Tax Policy Framework will therefore be issued to enhance administrative efficiency of the tax system and to provide consistency and certainty in tax legislation.

Taxation Policy Measures

Income Taxes

The budget proposed the following measures:

- › To increase the scope of the digital service tax to include income derived through internet and electronic networks.
- › Alignment of the withholding tax on service fees in the extractive industries with that withheld in respect of management and professional services under the same sector. This will eliminate ambiguity and the leakage of tax revenue through re-characterization of income.
- › Contributions to the National Health Insurance Fund (NHIF) be allowed to qualify for tax relief at the rate of 15% of the contributed amount for individuals.
- › Employers who engage a minimum of 10 graduates from both Universities and TVET institutions will be allowed to deduct from their taxable income an extra 50% on the cost of the apprentice emoluments.
- › For capital allowances, the reducing balance method will be replaced with the straight-line method. This will provide certainty in taxation, ease tax administration and enhance compliance.
- › Any interest paid in excess of 30% of a company's earnings before interest, taxes, depreciation and amortization will be disallowed in the determination of taxable income.

Value Added Tax

- › An introduction of VAT exemption on medicament used in health facilities including decongestants and food supplements.
- › VAT exemptions will be provided on diagnostic and laboratory reagents, artificial respirators, breathing appliances, gas masks and medical equipment and technologies used in providing medical services.
- › VAT exemptions will be introduced on inputs used in the manufacture of medical ventilators and breathing appliances.
- › Goods exclusively used in geothermal or oil exploration and mining prospecting will be exempted from VAT.
- › The budget also proposed to exempt from VAT equipment used in the generation of solar and wind energy.
- › Asset transfers into the Real Estate Investment Trusts and Asset Backed Securities will be VAT exempt.

Custom Duties

- › To sustain the fight against the Covid-19 pandemic, EAC partner states have agreed to extend the duty-free importation window for raw materials and inputs for manufacture of masks, sanitizers, ventilators and personal protective equipment for a further one year.
- › The EAC partner states agreed that imported iron and steel shall continue attracting a duty rate of 25% with the corresponding specific rates for a further one year. This will help curb the stiff competition experienced by local manufacturers from cheaper imports.
- › Vegetable products including potatoes, peas and tomatoes shall attract a duty rate of 30% for one year. This will serve to protect local farmers from competition by cheap imports.

- › The duty-free importation of inputs for the manufacture of baby diapers has been extended for a further year.
- › The 25% duty on imported products for the manufacture of leather and footwear products will be retained. A further duty will be imposed to guard against undervaluation of the imported products.
- › The 35% duty on imported furniture has been extended for a further one year.
- › The duty-free window for importing inputs for the manufacture of roofing tiles will be extended for a further one year to give impetus to the Affordable Housing Programme.

Excise Duty

- › The budget proposed to re-introduce excise duty on betting at a rate of 20% of the amount wagered.
- › Excise duty will be introduced on products containing nicotine or nicotine substitutes at a specific rate of Ksh. 5 per gram.
- › It was proposed to provide a rebate on the excise duty paid on internet data by a person who purchases the data in bulk for resale.

Enhancing Tax Administration Procedures

- › The budget proposes to amend the Tax Procedures Act to empower the Kenya Revenue Authority (KRA) to seek the intervention of other Agencies to facilitate compliance with the provisions of the digital service tax.
- › It was proposed to amend the Kenya Revenue Authority Act to increase the maximum reward to a person who provides information leading to the identification of unassessed taxes from Ksh. 100,000 to Ksh. 500,000. The reward to a person who provides information leading to recovery will also be increased from Ksh. 2 million to Ksh. 5 million. This is in a bid to bolster tax compliance and revenue collection.
- › Various amendments to the Act have been proposed through the Tax Appeals Tribunal (Amendment) Bill, 2021 that will facilitate faster disposal of tax appeals and boost revenue collection.

Highlights of Finance Bill 2021

The Finance Bill 2021 was published on 5th May 2021. The reason for publishing the Bill early is to ensure that the proposed changes can become effective by 1st July 2021. Once signed into law, we will be able to list the full break down the changes in details but in the meantime we summarize the proposed changes as follows: -

- › **Definition of "Control"**) The proposed definition of control, which is more comprehensive and wider.
- › **Definition of "Infrastructure Bond"**) The Bill seeks to bring clarity to the definition of the term infrastructure bond as, "A bond issued by the government for financing strategic public infrastructure facilities.
- › **Definition of "Permanent Establishment"**) The Bill proposes to amend the definition of permanent establishment by expanding the scope so as to prevent instances of abuse by entities through artificial avoidance of permanent establishment status
- › **Definition of "Digital Marketplace"**) The Bill seeks to amend the taxing section of the ITA by substituting the current definition with "income accruing from a business carried out over the internet or an electronic network, including through a digital marketplace".

- › **Persons liable to Digital Tax** › The Bill proposes to amend and expand the current provisions on Digital Service Tax so as to cover more persons.
- › **Removal of the time limit to carry forward losses** › The Bill proposes to delete the provision restricting the carry forward of tax losses beyond the nine-year period.
- › **Introduction of Interest Restriction Rule** › The Bill proposes to repeal the provision on limitation of interest deductible expense using thin capitalization rules based on debts to equity ratios (3:1) and replace it with the interest to earnings ratio.

Proposed amendments to the Tax Procedures Act

- › **Definition of Tax Law** › The Bill proposes to amend the definition of 'tax law' to include the Miscellaneous Fees and Levies Act 2016.
- › **Record Keeping** › The Bill proposes to extend the period for retention of records from five years to seven years.
- › **Period for amending an assessment by the Commissioner** › The proposed change seeks to increase the period in which the commissioner may amend an assessment from the date of submission of a self-assessment return from 5 years to 7 years.
- › **Exemption from Withholding Tax Obligations** › The Bill proposes to amend the Commissioner's powers to exempt any supplier from WHVAT obligations if such supplier has sufficiently demonstrated that due to the nature of his business, and due to the application of the section, he is going to be in a continuous credit position for a period of not less than twenty-four months.

Other proposed amendments are on the below tax heads

- › Admissibility of Evidence
- › Due Date on submission of notice of objection electronically
- › Introduction of penalties for non-compliance to common reporting standards
- › Commissioner remedy to seek intervention of a relevant authority in the collection of tax such as DST
- › Concurrent civil and criminal proceedings.
- › Protection of officers on reasonable cause.
- › Transactions on which a PIN is required

For a comprehensive review of the upcoming Finance Act 2021, please look out for our future newsletters.

The proposed changes above will be debated in Parliament before adoption, if/once adopted, they will be sent to the president for assent into law.

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.

Disclosure of Company Beneficial Ownership

Earliest date to be entered in the register of BOs | 21st day of February 2020

Deadline date for disclosure of company beneficial ownership | 31st day of July 2021

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

DISCLAIMER: This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, Mbaya & Associates, its members, employees and agents do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.