OVERVIEW OF THE FINANCE BILL, 2021

Tax Alert

Introduction

The Finance Bill, 2021 (the Bill) was published on 5th May 2021 and presented to the National Assembly on 11th May 2021 for debate and public participation.

The Bill has focused on streamlining and strengthening the existing laws as opposed to introduction of new taxes which has been the norm in the past. Except for the betting industry where excise tax is being re-introduced.

The Bill proposes to amend the Income Tax Act (“ITA”), Value Added Tax Act (“VATA”), 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.

The Income Tax proposals will be effective as from 1 January 2022 while the Value Added Tax, Excise Duty and some sections of the Tax Procedures Act will be effective as from 1st July 2021 upon presidential assent.

We summarize below a detailed analysis of the Bill together with our commentary on its potential impact on your business.

INCOME TAX PROPOSALS

Re-introduction of the definition of control

Effective 1st January 2022

The Bill has re-introduced the definition of control with relation to a body corporate. Currently the Income Tax Act does not define control. Notably, the proposed definition is as contained in the Income Tax Bill, 2018 which has never been tabled in parliament for debate. Control in relation to a person shall now include the following instances;

- A person, directly or indirectly, holds at least 20% of the voting rights in a company;
- A person advances a loan of at least 75% of the book value of the total assets excluding a loan from a financial institution that is not associated with the person advancing the loan;
- A person guarantees any form of indebtedness constitute at least 70% of the total indebtedness excluding a guarantee from a financial institution that is not associated with the guarantor;
- A person appoints more than half of the board of directors or at least one director or executive member of the governing board of that person;
- A person is the owner of or has the exclusive rights over the know-how, patent, copyright, trademark, license, franchise or any 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;
- A person supplies at least 90% of the supply of the purchases of another person;
- A person purchases at least 90% of the sales of another person;
- A person has any other relationship, dealing or practice with another person which the Commissioner may deem to constitute control;

The expanded definition of control once assented into law will significantly impact the selection of comparables in formulation of Transfer Pricing policy. Specifically, some of the transactions that were previously considered to be at arms-length will now form part of the controlled transactions to be tested for compliance with the arms-length principle. Additionally, the new definition will also expand the scope of entities that will be subjected to the provisions of deemed interest.

Infrastructure bond defined

Effective 1st January 2022

The bill proposes to introduce the definition of an infrastructure bond to mean 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.

This is a welcome move as it provides clarity for proper classification and tax treatment of the exemptions applicable to infrastructure bonds. However, the definition does not prescribe the treatment in instances where the bond has mixed use, i.e. infrastructure and non-infrastructure use.

Definition of “permanent establishment” expanded

Effective 1st January 2022

The Bill proposes to expand the definition of a permanent establishment to include;

a) fixed place of business through which business is wholly or partly carried on;

b) 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:

c) 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;

d) 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;

e) 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.

The proposed definition is consistent with international best practice as anchored in the OECD Model Tax Convention and encompasses business models that were not previously within the scope of Income Tax and in effect encompass emerging business models.

Widening the scope of digital service tax

Effective 1st January 2022

The Bill has expanded the definition of a digital marketplace to mean, an online platform which enables users to sell or provide services, goods or other property to other users.

The Bill has also emphasized that income accruing from a business carried out over the internet or an electronic network including through a digital marketplace shall be income chargeable to tax in Kenya.

The Bill has clarified that DST is payable by twentieth day of the month following the month in which the digital service was offered. Currently the regulations provide for payment of DST at the time of payment for the service. The move is in line with the DST payment practice since January 2021.

The Bill has proposed to exempt resident persons from the ambit of DST, therefore, only non-resident persons will be liable to DST. DST payment is an advance tax which will be utilized against tax due at the end of the year hence for the profit-making persons within the DST space will still remit their income tax through installment taxes.

This comes as a relief to resident loss-making entities who have been remitting DST since January 2021. In addition, this is a welcome move and it in line with international best practice of ensuring that multinational entities pay DST in tax jurisdiction where the consumers are located irrespective of any physical presence.

Tax losses to be carried forward indefinitely

Effective 1st January 2022

The Bill has deleted the ITA provision on carry forward of losses. Currently tax losses can be carried forward for a period of 9 years including the year in which the loses arose. If the proposal is passed, tax losses will be carried forward indefinitely.

It is worth noting that this provision was removed in the wake of minimum tax, whose application has since been suspended by the High Court.

This is a welcome move, and it will benefit entities with substantial tax losses from capital investment as losses can be utilized indefinitely until they are extinguished. It will be interesting to see the fate of this provision once the minimum tax ruling appeal is heard and determined.

Overhaul of thin capitalization restrictions

Effective 1st January 2022

The Bill proposes to overhaul the ITA thin capitalization restrictions by repealing the current debt to equity ratio of 3:1 which is used to determine the disallowable interest portion for foreign controlled entities.

The Bill proposes to disallow interest expense which is in excess of 30% of earnings before interest taxes depreciation and amortization (EBITDA).

The proposed thin capitalization restriction require that the gross interest paid or payable to related persons and third parties in excess of 30 percent of the EBITDA of a resident borrower in any financial year will not be deductible for tax purposes. In addition, an adjustment will be made on any income which is exempt from tax by excluding it from the calculation of EBITDA for the relevant entity.

The restriction will be applicable to interest on all loans and payments that are economically equivalent to interest and expenses incurred in connection with raising the finance.
Going forward, it will be prudent for highly geared entities to consider the debt structure owing to the fact that most entities have structured their capital and equity in line with the existing provisions.

The move is in line with Action 4 of the BEPS project which aims at limiting base erosion through use of tax-deductible interest deductions and other financial payments.

Introduction of country-by-country reporting for ultimate parent entities of Multi National Enterprises resident in Kenya

Effective 1st January 2022

The Bill proposes to introduce Country-by-Country ("CbC") reporting requirements for ultimate parent entities of multinational enterprises (MNEs) which meet the below criteria:

(a) is resident in Kenya for tax purposes;
(b) is not controlled by another entity; and
(c) owns or controls a multinational enterprise group.

Qualifying MNE's shall submit returns, on an annual basis, of their group's financial activities in Kenya and all other jurisdictions where any of the group entities has a taxable presence. The return is required to contain information including, information relating to the amount of revenue, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash or cash equivalents.

This requirement will only apply to companies whose turnover exceed the prescribed threshold which will be set out in the regulations that are expected to be published in relation to the implementation of this new requirement.

The move is consistent with BEPS Action point 13 and it will give KRA the visibility of subsidiaries for MNES' whose Holding company is in domiciled in Kenya.

Tax rebate for graduate apprenticeships

Effective 1st January 2022

The Bill proposes to expand the existing applicability of the tax rebate to employers recruiting apprentices graduates from technical and vocational institutions. Currently, the rebate is restricted to university graduates.
This is a welcome move as it encourages employers to employ persons from these institutions as eligible employers. The rebate allows the employers to deduct a tax rebate equal to 50% of the amount of salaries and wages paid to at least 10 apprentices. The rebate is in addition to the corporate tax deduction, at the rate of 100% of the expense, which is already allowable under Section 15 of the Income Tax Act for the expenditure incurred in relation to salaries and wages.

Insurance relief on NHIF contributions

Effective 1st January 2022

The Bill also proposes to introduce relief on payments made by resident individuals to the National Hospital Insurance Fund ("NHIF") as an insurance relief.

The relief amount will be equivalent to 15% of the NHIF payment aggregated with the other insurance premiums. The relief shall not exceed KShs. 60,000 per annum.

Amendment of the limitation of benefits clause in DTAAs

Effective 1st January 2022

The Bill also proposes to amend the restrictions imposed by the limitation of benefits clause contained in section 41 of the ITA on access to benefits of the DTAA's that Kenya has ratified.
Currently access to DTA benefits in Kenya is restricted to companies which have at least 50% of the underlying ownership held by individuals who are residents of the other contracting state.
The Bill proposes to expand this scope to include companies that have at least 50% of the underlying ownership held by a person who is a resident of the other contracting state.

Investment allowances deduction amendment

Effective 1st January 2022

The Bill proposes to amend the second schedule of the ITA on the investment allowances available upon incurring certain capital expenditure. Currently the rates are on a reducing balance and the proposal is to use a straight-line method hence ensure equal installments claim on the residual value as follows;

Item	Proposed	Current
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 installments	50% in the first year and 25% on the residual value per year on reducing balance basis
Commercial and educational buildings including student hostels	10% per year on equal instalments	10% per year on reducing balance basis
Machinery used for manufacture, hospital equipment and ships air craft	50% in the first year and 25%on the residual value per year on equal instalments	50% in the first year and 25% on the residual value per year on reducing balance basis
Motor vehicles and heavy earth moving equipment	25% per year on equal instalments	25% per year on reducing balance basis
Computer and peripheral, computer hardware, computer software, calculators, copiers and duplicating machines	25% per year on equal instalments	25% per year on reducing balance basis
Furniture and fittings and telecommunication equipment	10% per year on equal instalments	10% per year on reducing balance
Filming equipment	25% per year on equal instalments	25% per year on reducing balance basis
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	50% in the first year and 25% on the residual value per year on reducing balance basis
Other machinery	10% per year on equal instalments	10% per year on reducing balance basis
Fibre optic cable	10% per year on equal instalments	10% per year on reducing balance basis
Farm works	50% in the first year and 25% on the residual value per year on equal installments	50% in the first year and 25% on the residual value per year on reducing balance basis

This is a welcome move as it will ensure a reduction in the timeframe within which capital allowances can be claimed as opposed to the existing framework which will see some capital expenditure being claimed in an extended period of time exceeding twenty years Considering the proposed amendment to carry forward losses indefinitely, persons will tax losses will not be disadvantaged on the significant investment allowances claimed in the first year of use as this will be carried forward indefinitely.

Proposed Amendments to the extractives Industry

Effective 1st January 2022

The Bill has further proposed to make various changes to the extractives industry as follows;

Details	Proposed rate	Current rate
Withholding tax on service fee paid by a contractor to a non-resident subcontractor in respect of mining or petroleum operations	10%	5.625%
Withholding tax on service fee paid by a licensee to a non-resident subcontractor in respect of mining or petroleum operations	10%	5.625%
Withholding tax on service fee paid by a contractor to a non-resident person in respect of management, training, or professional fees	10%	12.5%
Deductibility of interest / thin capitalisation threshold	30% of EBITDA	Debt to equity of 2 to 1

The proposed new rates are subject to the lower rates that may be provided in double tax treaties that may be in force between Kenya and the country of residence of the recipient of the fees.

VALUE ADDED TAX

Reverse VAT Clarified

Effective 1st July 2021

The Bill has proposed to redefine reverse VAT to emphasize that reverse VAT is applicable to;

- Persons who are registered for VAT but they are not entitled to claim input VAT. This applies to entities which supply exempt services such as banks and insurance companies. These entities ought to pay reverse VAT upon importation of services for the furtherance of their business; and

- Persons who are not registered for VAT owing to the exempt nature of their business should also remit reverse VAT upon importation of services. This is not a new provision and the iTax functionality has already been updated to accommodate the generation of reverse VAT payment slips for VAT non-registered persons.

Expansion of the definition of a “digital marketplace”

Effective 1st July 2021

Following the operationalisation of the Value Added Tax (Digital Marketplace Supply) Regulations, 2020 and the Income Tax (Digital Service Tax) Regulations, 2020, (the **Regulations**) there was ambiguity on the taxation of services provided over a digital marketplace, specifically, there was an ambiguous definition of a “digital marketplace” as it appeared in the Income Tax Act and these Regulations.

The Bill now proposes to cure this ambiguity by expanding the current definition, for VAT purposes, to mean *“an online platform which enables users to sell or provide services, goods or other property to other users”.* This essentially covers virtually all online platforms, including mobile and web applications, including platforms for the supply of goods.

This new proposed provision applies to both resident and non-resident service providers who employ a digital marketplace, such as streaming of music, distance learning, use of websites, software, access to databases and self-education packages, where these electronic services are delivered to a person in Kenya. For the end consumer, not being a VAT registered person, the final price of these services will increase by the VAT amount, while this expansion of the definition brings into the tax net a broader proportion of businesses that operate online – increasing their compliance burden.

We foresee that implementation of VAT on digital services will require the goodwill of taxpayers as the internet may be difficult to police for a revenue authority. The revenue authority would also need to increase taxpayer sensitization to improve on compliance buy-in.

Restriction of Input VAT on hiring or leasing of passenger cars and minibuses

Effective 1st July 2021

Section 17(4)(a) of the VAT Act restricts claiming input VAT relating to the acquisition, repair and maintenance, purchase of spare parts for passenger cars or mini buses, not unless the passenger cars or mini buses are acquired by the registered person exclusively for the purpose of making a taxable supply in the ordinary course of a continuous and regular business of selling or dealing in or hiring of passenger cars or mini buses.

In addition to the above existing provision the Bill proposes to restrict the deduction of input VAT relating to the hiring or leasing of passenger cars or mini buses.

The amendment if assented into law will provide the much-needed clarity and reduce areas of conflict with the Kenya Revenue of Authority. Persons will be expensing the restricted input VAT and as a consequence increase the cost of hiring or leasing of passenger cars and minibuses.

Group VAT registration repealed

Effective 1st July 2021

The Bill further proposes to repeal the existing provision allowing the Cabinet Secretary (CS) for the National Treasury to provide regulations for the registration of group companies as one registered person for VAT purposes.

It is worth noting that the group VAT regulations though published for public participation a while back they have never been gazetted. The move is an adverse approach given the complexities and potential tax leakage that may arise from group registration especially where the entities within the group deal with both vatable and exempt services and at the same time they do offer intergroup supplies.

VAT regulations to be Gazetted by CS Treasury without Parliamentary approval

Effective 1st July 2021

The Bill proposes to delete the provision that mandates the CS Treasury to table VAT regulations before the National Assembly for approval before they can take effect.

It would be unconstitutional and against Section 11 of the Statutory Instruments Act which directs the CS National Treasury to gazette any regulations without parliamentary approval. It will also be surprising if parliament would pass the provision considering that it takes away their powers and leaves taxpayers at the mercy of the CS National Treasury on gazettement of VAT regulations.

COVID-19 Relief measures

Effective 1st July 2021

Owing to the strain placed on Kenya’s public and private healthcare system in the wake of the COVID-19 pandemic, the government proposes to exempt from VAT various medical appliances and preparations.

These include:

- Vitamin C and its derivatives;
- Immunological products;
- Medical ventilators and inputs;
- Diagnostic or laboratory reagents;
- Oxygen therapy or therapeutic respiration apparatus;
- Insulin; and
- Food supplements.

Where these goods are imported, their prices are likely to reduce as VAT on importation will not apply. At the EAC level, through the EAC Common External Tariff, these goods should similarly be exempted from import duty when imported into the EAC Single Customs Territory.

Boost to the energy sector

Effective 1st July 2021

With a view to strengthening the energy sector in Kenya, the Bill proposes to exempt:

- Taxable goods imported or purchased locally for direct and exclusive use in geothermal, oil, mining prospecting or exploration;

- 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; and

- All VAT exempt goods already exempted prior to 25 April 2020 will remain in force, if an agreement / contract was signed by then.

Exportation of services to be VAT exempt

Effective 1st July 2021

Currently, the law provides that the export of services, where these services are used and consumed outside Kenya is zero rated for VAT purposes. This means that a service provider who exports services is VAT registrable if they meet the USD 50,000 turnover threshold and the opportunity to apply for a VAT refund on input VAT incurred to make these zero-rated supplies.

In the recent past, Coca-Cola and Google Kenya have successfully challenged tax assessments issued by the KRA seeking to claim VAT on otherwise exported services. We also note that the payment of VAT refunds to taxpayers has been a perennial problem for the National Government.

When reviewing a value chain within Kenya, it becomes apparent that VAT flows through the different suppliers and is finally borne by the ultimate consumer. This is achieved by allowing a business to deduct input VAT on purchases against output VAT on sales. For exports of services (as well as goods), the international practice is to apply the destination principle that achieves tax neutrality, under which exports are free of VAT (zero rated) and imports are taxed on the same basis and at the same rate as domestic supplies. The destination principle ensures that the net tax burden on imports is equal to the net tax burden on the same supplies in the domestic market. In addition, it also ensures that the amount of tax refunded or credited in the case of exports is equal to the amount of tax that has been levied.

This move will potentially make Kenya an unattractive location for the provision of services globally, despite the gains made in mobile phone and internet penetration.

Proposed Transition to vatable status

Effective 1st July 2021

The following items will be vatable at the rate of 16% as from 1st July 2021. This is pursuant to the amendments contained in the Finance Act, 2020.

HS Code	Item	New rate	Current VAT Status
The supply of liquefied petroleum gas.		16%	Zero Rated
8802.11.00	Helicopters of an unladen weight not exceeding 2,000 kg.	16%	Exempt
8802.12.00	Helicopters of an unladen weight exceeding 2,000kg.	16%	Exempt
8802.20.00	Aeroplanes and other aircraft, of unladen weight not exceeding 2000Kgs	16%	Exempt
8803.30.00	Other parts of aeroplanes or helicopters	16%	Exempt
8805.21.00	Air combat simulators and parts thereof.	16%	Exempt
8805.10.00	Aircraft launching gear and parts thereof; deck arrestor or similar gear and parts thereof	16%	Exempt
8805.29.00	Other ground flying trainers and parts thereof.	16%	Exempt
8309.90.90	Aluminium pilfer proof caps with EPE liner.	16%	Exempt
Other aircraft (for example, helicopters, aeroplanes); spacecraft (including satellites) and suborbital and spacecraft launch vehicles		16%	Exempt

Suppliers of the above items who are not currently registered for VAT especially the exempt items will now be required to register for VAT and charge 16% on sales. The VAT amount will be passed on to the consumer and as a consequence the cost of the above items will rise.

Transition from Zero rated to standard rated

Effective 1st July 2021

The Bill also proposes to subject ordinary bread to VAT at the standard rate of 16% from the current rate of 0%. Manufacturers of bread will pass on the VAT component to the end consumer and as a result there will be an increase in the price of ordinary bread.

EXCISE DUTY

Introduction of excise duty on locally produced chocolates and confectionery

Effective 1st July 2021

The Bill proposes to introduce excise duty at KES 20.99 per kg of sugar confectionery (local and imported) specifically sugar confectionery (including white chocolate), not containing cocoa and chewing gum (whether or not sugar-coated). When imported, these items attract customs duty at a rate of 25% of their customs value.

In the same vein, chocolate and other food preparations containing cocoa (in blocks, slabs or bars) (whether locally sourced or imported) are proposed to be subject to excise duty at KES 209.88 per kg. This is in addition to the 25% import duty applicable on importation of these goods.

Removal of excise duty on bottled glass

Effective 1st July 2021

The Bill proposes to make glass bottles (whether locally sourced or imported) not subject to excise duty. Kenya's unilateral introduction of excise duty on imported glass bottles, where the same has not been discussed and approved by the East African Community States' council of ministers, was the subject of a petition filed at the East African Court of Justice (EACJ) against the Government of Kenya by Kioo Limited. With the phasing out of the use of PET bottles in the bottled water industry, this will come as a welcome relief for the industry as bottled water is already subject to excise duty at KES 5.74 per litre effective 25 September 2020.

Introduction of excise duty on nicotine products

Effective 1st July 2021

The Bill proposes to introduce excise duty of KES 5,000 per kg on products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application. From a policy perspective, this appears to be in line with the taxation of other similar products such as cigarettes, in an effort to boost public health.

Introduction of excise duty on betting transactions

Effective 1st July 2021

For an industry that is already heavily taxed, the Bill proposes to re-introduce excise duty on betting transactions at the rate of 20% on the amount wagered or staked, following its removal on 30 June 2020. We project that this will adversely impact the size of the industry and lead to lower collection of other taxes in the industry as a result. From an industry perspective, punters may be drawn to unregulated bookmakers where the Betting Control and Licensing Board and the Kenya Revenue Authority have no oversight.

Introduction of 20% excise duty on fees and commissions in respect of a loan

Effective 1st July 2021

At present, excise duty at a rate of 20% applies on other fees (fees, charges or commissions) charged by financial institutions (such as banks and insurance companies), but the definition of "other fees" specifically excludes "fees or commissions earned in respect of a loan". This exclusion is what is proposed to be deleted, thus increasing the cost of concluding financing arrangements. Read together with the proposed amendment of thin capitalisation rules to any interest in excess of 30% of EBIDTA, we foresee debt transactions in Kenya becoming expensive and investors may shy away from debt financing owing to the tax charge.

TAX PROCEDURES ACT

Formalizing of Common Reporting Standards (CSR)

Effective 1st July 2021

The CRS set out the rules governing the automatic exchange of financial account information in tax matters developed by the OECD to tackle tax evasion and improve tax transparency and compliance. If the Bill is passed as currently drafted, financial institutions will have reporting obligations under CRS Regulations which will be prescribed by the Cabinet Secretary for National Treasury. Financial institution means a custodial institution, depository institution, investment entity or specified insurance company. These entities will have due diligence obligations and record keeping requirements.

Record keeping and tax audits

Effective 1st July 2021

Currently, a taxpayer is required to maintain tax records for a period of 5 years. This period is equivalent to the “look-back” period that the Kenya Revenue Authority can audit a taxpayer for compliance. Under the provisions of the Tax Procedures Act, an amended self-assessment can be used by the KRA for a period in excess of 5 years in the case of gross or willful neglect, evasion or fraud by the taxpayer at any time.

The Bill proposes to extend this 5-year limitation to 7 years, meaning that taxpayers can expect larger tax assessment as the quantum of the principal tax will increase, as well as applicable penalties and interest. To note however is that interest is capped the value of the tax arrears (in-duplum rule) regardless of the period the principal tax has been outstanding.

Removal of withholding VAT exemption provisions

Effective 1st July 2021

The Bill proposes to delete Section 42A(4A) of the TPA removing the option for qualifying suppliers to apply to the Commissioner for exemption from WHVAT.

Currently suppliers who have been in a VAT credit position for a period of twenty four months or more owing to the operation of withholding VAT are eligible for WHVAT exemption status provided that they can demonstrate that the VAT refund position will persist in the subsequent twenty four months. The exemption status are valid for a period of twenty four months and renewals can always be done upon expiry.

It is important to note that the powers of the Commissioner to grant WHVAT refunds has been retained. The move is geared towards giving the Commissioner more scrutiny on the circumstances giving rise to WHVAT refunds and identify any possible tax leakage avenues.

The provision if assented to will be a blow to retailers in low margin business such as retailers and distributors who are primarily driven by volumes and have been enjoying the WHVAT exemption status. The amendment is silent on the fate of the existing WHVAT exemption letters but the interpretation is that they will be valid until the stated expiry date.

IMPORT DECLARATION FEES (IDF) AND RAILWAY DEVELOPMENT LEVY (RDL)

Public interest IDF and RDL exemption

Effective 1st July 2021

IDF currently applies at a rate of 3.5% of the customs value of goods entered into Kenya for home use, and is payable by the importer. RDL applies under similar circumstances but at a rate of 1.5% of the customs value of the imports. The Bill seeks to exempt from IDF and RDL goods which in the determination of the Cabinet Secretary for National Treasury are in the public interest or promote investment whose value shall not be less than KES 5 billion.

INSURANCE ACT

The Bill seeks to amend the Insurance Act to provide for the regulation of foreign reinsurance brokers by amending the definition of brokers which previously excluded the brokers who are not resident in Kenya. The Bill further seeks to provide for an annual fee to be paid by a registered person who is licensed as an insurer under the Act.

KENYA REVENUE AUTHORITY ACT

The Bill proposes to amend the Kenya Revenue Authority Act, 1995, to increase the maximum reward to informers. The proposed increased rewards will be as follows:

- In the case of information leading to the identification of unassessed duties or taxes – 1% of the duties or taxes so identified or KES 500,000 (up from KES 100,000), whichever is the less; and

- in the case of information leading to the recovery of unassessed duties or taxes, 5% of the taxes or duties so recovered KES 5,000,000 (up from KES 2,000,000), whichever is the less.

RETIREMENT BENEFITS ACT

The Bill seeks to amend the Retirement Benefits Act, 1997, to provide for the registration and regulation of corporate trustees that provide services to pension schemes. Implication: The proposed amendment will expand the scope of regulation of the Retirement Benefits Authority to include corporate trustees.

The Bill proposes to amend the Act so as to provide an additional three months for trustees to file audited accounts where the delay is justified. Where an extension is provided, the trustees are not subject to late submission penalty.

The Bill proposes to amend the Act so as to provide for a post-retirement medical fund which shall be within a scheme and from which the costs of medical benefits shall be met in accordance with the medical fund rules.

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