

---

# FINANCE Act, 2021



**TAXPLAN  
CONSULTING**

Tax Advisory, Business Advisory, Outsourcing & Trainings

## Background

The Finance Act 2021 was assented on 29<sup>th</sup> June 2021 by the President Uhuru Kenyatta and was gazetted on 30<sup>th</sup> June 2021.

In the gazette notice, some sections of the new law got into effect on July 1<sup>st</sup> while others are set to begin on January 1, 2022.

"This Act may be cited as the Finance Act, 2021, and shall come into operation, or be deemed to have come into operation, as follows— (a) sections 9, 10, 13, 14, 19, 21 (a), 21 (b), 21 (e), 40, 50, 58, 60, 73, 75, and 76, on the 1st of January 2022," the notice stated.

One important observation is with regards to the definitions of 'Control' and 'Permanent Establishment' which have been expanded in line with OECD guidelines which is the international best practice, and it is expected to result into a couple of changes to business setups that could trigger adverse tax implications on areas such as Transfer Pricing arrangements as well as in the creation of tax presence in Kenya by non-resident persons. Interest restriction criteria has also been redefined from the 3:1 debt to equity ratio that was previously under the thin capitalization provision to the 30% of Earnings Before Interest, Tax, Depreciation and Amortization (EBITDA) provision.

This highlight looks at the Finance Act 2021 under the following sub-headings

1. Expanded definitions
2. Tax exemptions under Income Tax
3. Capital allowances
4. VAT
5. Excise Duty
6. Miscellaneous fees and levies
7. Amendments under the Tax Procedures Act

## 1. Expanded Definitions

### Expanded definition of 'Control'

The Finance Act 2021 has expanded the definition of 'control' and circumstances that give rise to control. Before, control entailed ownership of at least 25% of the shares or voting rights in another company. The FA 2021 has since reduced this to 20%. Further, the Finance Act of 2021 has introduced the following as instances that will give rise to control:

- Where loans advanced by the person to another person constitute at least 70% of the book value of the total assets excluding loans from financial institutions not associated with the person advancing the loan.
- Where guarantees by the person for any form of indebtedness of another person constitute at least 70% of the total indebtedness of the other person excluding a guarantee from financial institutions not associated with the guarantor.
- Where the person appoints more than half of the board of directors of another person or at least one director or executive member of the governing board of that person.
- Where a person or a person designated by that person supplies at least 90% of his sales to another person and upon assessment, the Commissioner deems influences in the price or any other conditions of the supply.
- Where the Commissioner is of the opinion that the relationship, dealing or practice with another person constitutes control
- Where a person purchases or designates a person to purchase at least 90% of the sales of another person and upon assessment, the Commissioner deems an influence in the price or any other conditions of the purchase; and

- Where the manufacture or processing of goods or articles or business carried on by one person is dependent on the use of know-how, patent, copy right, trademark, license, franchise or any other business or commercial right of a similar nature, which the other person has exclusive rights to.

### Expanded definition of a Permanent Establishment

The definition of a Permanent Establishment (PE) has been expanded to cover the following:

- A building or construction site or project installation or any supervisory activity connected to the site or project that has existed for: (a) a period of 183 days or more; or (b) an aggregate of between 30 to 183 days when carried on in one or more periods of time; or (c) for more than 30 days if carried on by a related enterprise.
- Provision of consultancy services within Kenya for a period exceeding an aggregate of 91 days in a year.
- A warehouse in relation to a person whose business is providing storage facilities to others.
- A farm or plantation for agricultural activities.
- An installation or structure used in the exploration of natural resources where the exploration continues for a period of more than 91 days.
- A dependent agent of a person who acts on their behalf in Kenya including the negotiation and conclusion of contracts except where the activities are preparatory or auxiliary in nature.

### Expanded definition of an infrastructure bond

The Financial Act 2021 has defined 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, a communication network, or an energy project.

This clarification is very useful for persons who want to invest in infrastructure bonds due to the associated income tax exemptions as a result.

The commencement date is 1st July 2021

### Change of interest restriction provision

The Financial Act 2021 has introduced changes to the thin capitalization provision by repealing the former provision where interest payments in a year of income by a foreign controlled entity were not either partly or fully tax deductible depending on the ratio of debt to equity which was 3:1 respectively. The Financial Act 2021 has introduced *the restriction* of tax deductibility of interest expense on any gross interest amounts paid or payable to related persons and third parties to amounts exceeding 30% of Earnings Before Interest, Taxes, Depreciation and Amortization (**EBITDA**) with effects from 1<sup>st</sup> January 2022

This revised provisions shall be applicable to interest on all loans payments that are economically equivalent to interest and expenses incurred in connection with raising the finance and shall apply to all entities including those in the extractive sector except for:

- (a) Banks or financial institutions licensed under the Banking Act; and
- (b) Micro and Small enterprises registered under the Micro and Small Enterprises Act, 2012.



## 2. Tax exemptions under Income Tax

### Tax Exemptions on Trust Income

Trust income that is received by the beneficiaries shall only be exempt from Income Tax effective 1<sup>st</sup> July 2021 where:

- The amount paid out of the trust to the beneficiaries is used exclusively for the purposes of education, medical treatment, or early adulthood housing; or
- The income paid to any beneficiary which is collectively below KShs 10 million in that year of income; and
- Any other amount the Commissioner may deem to qualify for which tax has been withheld at the rate of 25%.

### Recognition of Registered Family Trusts for Income Tax

Income from any transactions related to settlement on children from registered family trusts and income settlements from a family trust are now tax exempt. In addition, the following is also exempted from income tax in relation to family trusts:

- Transfer or sale of property including investment shares for the purpose of transferring the title or the proceeds into a registered family trust.
- The income or principal sum of a registered family trust; and
- Capital gains relating to transfer of title of immovable property to a family trust.

These changes are in line with the proposed introduction of family trusts under the Trustee (Perpetual Succession) Bill, 2021.

### Additional exemptions to minimum tax

In addition to businesses whose retail prices are controlled by the government, insurance businesses and some entities that have been gazetted as exempt from minimum tax, the following have also been exempted from minimum tax beginning 1<sup>st</sup> July 2021:

- Manufacturing companies whose cumulative investment in the preceding four years is at least KShs 10 billion.
- Distribution businesses whose income is on commissions; and
- Persons licensed under the Special Economic Zones Act, 2015.

### Removal of carrying forward of tax losses

The Financial Act 2021 has removed the expiry of tax losses for 10 years. Now losses can be carried forward indefinitely.

### Insurance Relief on NHIF contributions

Individual taxpayers will now claim insurance relief on contributions made to the National Hospital Insurance Fund ("NHIF") in a year of income. Taxpayers will claim relief at the rate of 15% of what they have contributed. The commencement date is 1<sup>st</sup> January 2022

### Expansion of scope of tax rebate scheme for apprenticeship program

Employers who engage graduates from Technical and Vocational Education and Training (TVET) for a period of 6 to 12 months have been included in the tax rebate scheme. The tax rebate scheme previously was available to employers who engage 10 university graduates as apprentices.

### Repeal of special arrangements for relief from Double Taxation

The provisions governing special arrangements for relief from double taxation provided by the Double Taxation Avoidance Agreements (DTAAs) that Kenya has signed with other nations has been changed. The new provisions provides that all DTAAs shall be formulated in line with the provisions of the Treaty Making and Ratification Act, 2012 and not the Statutory Instruments Act, 2013 as had been the earlier case

## Digital Service Tax

According to the Financial Act 2021, a digital marketplace is an online or electronic platform, which enables users to sell or provide services, goods, or other property to other users.

Digital Service Tax is to cover all income accrued from business activities made over the internet or an electronic network including through a digital marketplace

### Requirements of parent entities of multinational enterprises to file returns on all group activities

An ultimate parent entity of a multinational enterprise group will be required to submit to the Commissioner a return describing the group's financial activities in Kenya, where its gross turnover exceeds the prescribed threshold, and in all other jurisdictions where the group has taxable presence.

## 3.Capital Allowances

### Amendments to Investment Allowances deduction method

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

## Re-introduction of Investment Deduction at the Rate of 100%

The Financial Act 2021 has re-introduced investment deduction (ID) at the rate of 100% where:

- The cumulative investment value in the preceding three years outside Nairobi and Mombasa Counties is at least KShs 2 billion; or
- The investment value outside the Counties of Nairobi and Mombasa is at least KShs 250 million; or the capital investments are made in a Special Economic Zone (SEZ).

The commencement date is 1st January 2022

## Special transition of accelerated ID at the Rate of 150%

As per the Finance Act 2021, where a person had made investments in the preceding three years on or before 25th April 2020 cumulatively amounting to KShs 2 billion and would have qualified for investment deduction at the rate of 150% they shall be eligible for investment deduction at the rate of 150% for the investment made on or before 25 April 2020.

The expected hurdle with this proposal is its applicability because the effective date will be from 1st January 2022, yet most taxpayers will already have filed their tax returns for the 2020 year of income and the only way to take advantage of this would be through the amendment of their tax returns. The commencement date is 1st January 2022

## Extension of Investment Deductions (ID) at the rate of 150% for capital expenditure supporting the SGR

The period for Investment Deductions claims at the rate of 150% on capital expenditure supporting the SGR operations has been extended by up to 31 December 2022. To qualify for the ID claim, the capital expenditure must be at least KShs. 5 billion and incurred on the construction of bulk storage and handling facilities for supporting the Standard Gauge Railway (SGR) operations. Further, the storage facilities must be of at least 100 metric tonnes of supplies. The commencement date is 1st July 2021

## Amendments to the Ninth Schedule to the ITA

Notable changes have been introduced as follows on the extractive industry sector.

- The Financial Act 2021 has aligned the capital deductions criteria for machinery used to undertake operations in extractive industry under a prospecting right to equal instalments from a reducing balance basis as per the Second Schedule.
- The withholding tax rate for service fees paid by a contractor or a licensee has been increased to 10% from 5.625% and reduced the withholding tax to be deducted by a contractor in the case of management, training, or professional fees to 10% from 12.5%.
- Interest restriction in the Ninth Schedule to the ITA has also been aligned to 30% of EBITDA.

The commencement date is 1st January 2022

## Clarifications on definitions relating to investment allowances

The Finance Act 2021 has made the following clarifications in relation to investment allowances qualification:

- Farm works mean farmhouses, labour quarters, any other immovable building necessary for the proper operation of the farm, fences, ditches, drains, water, and electricity supply works and other works necessary for the proper operation of the farm.
- Machinery used in the generation of electricity for own consumption or for distribution to other persons without necessarily being through the national grid is subject to investment allowance at the applicable rate.
- Civil works include roads and parking areas, railway lines and related structures, water, industrial effluent, and sewerage works, communications and electrical posts and pylons and other electrical supply works, and security walls and fencing; and

The items under the definitions of civil works and farm works qualify for investment allowances. The commencement date: 1st January 2022

## 4.VAT

### VAT AMENDMENTS

**The Finance Act has reclassified the following items from exempt to standard rate of 16 %.**

It is expected that the above goods will increase their prices to the end consumers. Effective Date: 1st July 2021

(i)	Disposable plastic syringes of tariff no. 9018.31.10
(ii)	Other syringes with or without needles of tariff no. 9018.31.90.
(iii)	0402.99.10 Milk, specifically prepared for infants
(iv)	0402.91.10 Other not containing added sugar or other sweetening matters specially prepared for infants.
(v)	Airlid paper without super absorbent polymer 180gsm/67 of tariff number 4803.00.0
(vi)	Airlid paper without super absorbent polymer 80gsm/67 of tariff number 4803.00.0
(vii)	Plain polythene film/PE of tariff number 3920.10.10
(viii)	PE white 25-40gsm/release paper of tariff number 4810.99.00
(ix)	12-16 gsm spun bound piyropo nonwoven cover stock/15gsm spun bound PP non-woven SSMMS hydrophobic legcuffs of tariff number 5603.1190.

**The Act has reclassified the following items from standard rated (16%) to exempt.** It is expected that the above goods will increase their prices to the end consumers. Effective Date: 1st July 2021

- Milk in powder, granules, or other solid forms, of a fat content by weight exceeding 1.5% not containing added sugar or other sweetening matter.
- Other milk in powder granules or other solid forms, of a fat content, by weight, exceeding 1.5%.
- Other milk
- Protein concentrates and textured protein substances.
- Food preparations specially prepared for infants.
- Vitamin C and its derivatives
- Food supplements
- Malaria diagnostic test kits
- Immunological products unmixed, not put up in measured doses or in forms or packing for retail sale
- Immunological products put up in measured doses or in forms or packing for retail sale
- Immunological products put up in measured doses or in forms or packings for retail sale.
- Antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes.
- Other medicaments, containing alkaloids or derivatives containing norephedrine or its salts
- Blood giving set and infusion sets
- Orthopaedic or fracture appliances
- 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.
- Needle holders and urine bags of tariff heading 3926

- Artificial teeth and dental fittings of tariff numbers 9021.21.00, 9021.29.00 and artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00.
- Airway Goeddel and Ambu bags
- Blood giving set and infusion sets
- Medical ventilators and the inputs for the manufacture of medical ventilators
- Physiotherapy accessories, treadmills for cardiology therapy and treatment of tariff number 9506.91.00 for use by licensed hospitals
- DE panthenol of tariff number 3304.99.00 used for medical nappy rash treatment by licensed hospitals
- Medicaments of tariff numbers 3003.41.00, 3003.42.00, 3003.43.00, 3003.49.00, 3303.60.00 (excluding goods of heading 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed for therapeutic or prophylactic uses.
- Diagnostic or laboratory reagents, of tariff number 3822.00.00 on a backing, prepared diagnostic, or laboratory reagent whether on a backing, other than those of heading 30.02 or 30.06, certified reference materials
- Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, 9018.20.00, 9018.90.00
- Other instruments and appliances, of tariff number 9018.41.00, used in dental sciences, dental drill engines, whether combined on a single base with other dental drill engines whether or not combined on a single base with other dental equipment.
- Other instruments and appliances, of tariff number 9018.41.00, used in dental sciences, dental drill engines, whether combined on a single base with other dental drill engines whether or not combined on a single base with other dental equipment.
- Ozone therapy, oxygen therapy, aerosol therapy, artificial respiration, or other therapeutic respiration apparatus.
- Other breathing appliances and gas masks, excluding protective masks having neither mechanical parts nor replaceable filters.
- Apparatus based on the use of x-rays, whether for medical, surgical, or dental of tariff numbers 9022.12.00, 9022.13.00, 9022.14.00 and 9022.19.00.
- Apparatus based on the use of alpha, beta, or gamma radiations, whether for medical, surgical, or dental of tariff numbers 9022.21.00, 9022.29.00, 9022.30.00 and 9022.90.00
- Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or other phenomena, whether or not recorded of tariff number 8523.80.10, including matrices and masters for the production of discs.
- Weighing machinery (excluding balances of a sensitivity of 5 cg or better) of tariff number 8423.31.00 including weight operated counting or checking machines; weighing machine weights of all kinds.
- Metal Doppler-Pocket (wgd-002) and pulse oximeter finger held (Gima brand) Pc of tariff number 9018.19.00
- Sterilizer Dry Heat (Wdg-001-Grx-05A) Pc, autoclave steam tabletops of tariff number 8419.20.00
- Needle holders and urine bags of tariff heading 3926
- Tourniquets of tariff number 3926.90.99 for use by licensed hospitals.
- Taxable goods, excluding motor vehicles, imported, or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration by a company granted a prospecting or exploration license in accordance with the Energy Act, 2019, production sharing contracts in accordance with the Mining Act, 2016, upon recommendation by the Cabinet Secretary responsible for matters relating to mining, as the case may be
- 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, upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy
- Taxable supplies including fish feeding and handling, water operations, cold storage, fish cages, pond construction and maintenance, and fish processing and handling, imported or purchased for direct and exclusive use on the recommendation of the relevant state department
- Prefabricated biogas digesters.

- Biogas.
- Sustainable fuel briquettes for household and commercial use.
- The supply of denatured ethanol of tariff number 2207.20.00.
- Tactors other than road tractors for semitrailers.

**The Act has changed the following items from exempt to zero rated (0%) to exempt.** It is expected that the above goods will increase their prices to the end consumers. Effective Date: 1st July 2021

<p>Changed from exempt to zero rated</p> <p>Effective Date: 1st July 2021</p>	<ul style="list-style-type: none"> <li>• Supply of ordinary bread</li> <li>• Exportation of taxable services</li> <li>• The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight is now zero rated.</li> </ul>
---	--

**The Act has changed the following items from zero rated to standard rated (16%).** Effective Date: 1st July 2021

<p>Zero rated to standard rated</p> <p>Effective Date: 1st July 2021</p>	<p>Inputs or raw materials for electric accumulators and separators including lead battery separator rolls whether rectangular or square supplied to manufacturers of automotive and solar batteries in Kenya will now be subject to VAT at the standard rate.</p> <p>Effective Date: 1st July 2021</p>
--	---

**The following services are now zero rated (0%).** Effective Date: 1st July 2021

<p>Zero rated</p> <p>Effective Date: 1st July 2021</p>	<p>Transportation of sugarcane from farms to milling</p>
--	--

## **VAT exemption for transactions under Real Estate Investment Trusts (REITS)**

The transfer of assets and other transactions related to the transfer of assets into real estate investment trusts and asset-backed securities will now be exempt from VAT. Currently, this is standard rated.

## **Reverse charge VAT applicability**

The Financial Act 2021 provides the applicability of reverse charge VAT to include the following persons:

- persons who are not registered for VAT.
- persons registered for VAT but not entitled to claim input VAT.

Effective Date: 1st July 2021

## VAT on online transactions

The Financial Act 2021 now clarifies that VAT is applicable on all online vatable transactions that are conducted over the internet or on an electronic network. The Act further emphasizes that a digital marketplace is an online platform, which enables users to sell or provide services, goods, or other property to other users. Any persons doing online business be it sale of goods or provision of services are required to register and charge their customers VAT if their taxable sales exceed the set threshold of KShs 5 million annually. Effective Date: 1st July 2021

## Restriction of input VAT on hiring and leasing costs for automobiles

Registered persons will now be restricted from deducting input VAT incurred on leasing and hiring of passenger cars or mini-buses and their repair and maintenance thereof including spare parts. Effective Date: 1st July 2021

## 5.Excise Duty

### NEW RATES

Details	Old Rate	New Rate
Articles of plastic of tariff heading 3923.30.00	N/A	10%
Imported sugar confectionery of tariff 17.04	KShs 20 per Kg	KShs 35 per Kg
Local white chocolate in blocs, slabs or bars of tariff 1806.31.00, 1806.32.00, 1806.90.00	N/A	KShs 200 per Kg
Jewellery of tariff 7113 and imported jewellery of tariff 7117	N/A	10%
Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application	N/A	KShs 1,200 per Kg
Imported eggs of tariff heading 04.07	N/A	25%
Imported onions of tariff heading 07.03	N/A	25%
Imported potatoes, potato crisps and potato chips of tariff 07.01	N/A	25%
Imported pasta of tariff 1902	N/A	20%
Unsaturated polyester of tariff 3907.91.00	N/A	10%
Alkyd of tariff 3907.50.00	N/A	10%
Emulsion VAM of tariff 3905.91.00	N/A	10%
Emulsion – Styrene Acrylic of tariff 3903.20.00	N/A	10%
Homopolymers of tariff 3905.19.00	N/A	10%
Emulsion B.A.M of tariff 3906.90.00	N/A	10%

Imported furniture of any kind used in offices, kitchen, bedroom, and other furniture of tariff 9403	0%	25%
Telephone and internet data services	15%	20%
Betting, gaming, price competition and lottery (Excluding charitable lotteries)	N/A	7.5%
Illuminating kerosene supplies to licensed or registered manufacturers of paint, resin, or shoe polish	KShs 10,305 per 10001 @20degC	Exempt
Sale of ring back tune to a subscriber	15%	0%

## Relief for glass bottle importers within East Africa

The 2021 Finance Act has scrapped the current excise duty rate of 25% on glass bottles imported from East African countries. Excise duty at the rate of 25% had previously been introduced on imported glass bottles (excluding glass bottles for packaging of pharmaceutical products) through the Business Laws (Amendment) Act, 2020 to encourage local industries to venture into production of glass bottles. Therefore, glass bottles imported from outside East Africa Community Countries with the exception of those used for packaging of pharmaceutical products will continue attracting excise duty at the rate of 25%

## National Assembly approval on remissions of excise duty on beer or wine

The 2021 Finance Act provides that any remission provided in respect of beer or wine made from sorghum, millet or cassava or any other agricultural products, (excluding barley), grown in Kenya has to be approved by the National Assembly within 21 days after the notice is laid.

Previously, the Cabinet Secretary (CS) would grant the remission by notice in the Gazette without any input from the National Assembly. This is a welcome move as it will bring in checks and balances to scrutinize the actions of the CS on remissions granted in this industry. The commencement date is 1st July 2021

### Amendments to Excise definitions:

The Finance Act has accommodated the following definitions:

- (i.) The term "**Compound**" to be included in the Excise Duty Act as assigned to it according to Section 2 the Compounding of Potable Spirits Act as follows:

*"To communicate any flavour to, or to mix any ingredient or material with, spirits, but not so as to denature the spirits"*

The above amendment seeks to align the definition of compounding in line with the Compounding of Potable Spirits Act.

- (ii.) The term "**Possession**" to be included in the Excise Duty Act and defined as follows:

*"Possession means having, owning, or controlling any excisable goods including:*

- a) having in one's possession any excisable goods.
- b) knowingly having any excisable goods in the actual possession or custody of any other person.
- c) having any excisable goods in any place, whether belonging to or occupied by oneself or not, for the use of benefit of oneself; or
- d) having an excisable goods for the use or benefit of another person"

Where two or more persons, and any of them with the knowledge or consent of the others has excisable goods in his custody or possession, such goods shall be deemed to be in the custody and possession of all of them."

The above amendment seeks to clarify who is an importer or person liable to account for excise duty.

- iii. The term "**Other Fees**" to be amended by deleting the term "or fees or commissions earned in respect of a loan".

- This proposed amendment seeks to introduce excise duty at the rate of 20% on fees or commissions earned in respect of a loan by a financial institution. This will in turn increase tax revenue for the government.

The commencement Date is 1st July 2021

## 6. Miscellaneous Fees and Levies Act

### Refunds for overpaid fees and levies

The 2021 Finance Act has introduced a provision to allow for refund of any overpaid fees and levies under this Act in line with the refund of overpaid tax provisions under Section 47 of the Tax Procedures Act, 2015. The Commissioner will also have powers to determine the resultant penalties and interest if the levies and fees remain unpaid. The commencement date is 1st January 2022

### Import Declaration Fee and Railway Development Levy exemption

The 2021 Finance Act provides for exemption from Import Declaration Fee (IDF) and Railway Development Levy (RDL) for goods that the CS in charge of the National Treasury may determine to be in public interest or promote investment and whose value exceed KShs 5 billion. The commencement date is 1 July 2021

## 7. Tax Procedures Act

### The following changes have been introduced into the TPA

Issue	Commencement Date	Change as per the Finance Act, 2021
Inclusion of the Miscellaneous Fees and Levies Act, 2016 in the definition of 'tax law'.	1st July 2021	The Finance Act 2021 has included the Miscellaneous Fees and Levies Act, 2016 under the scope of the TPA.
International Tax Agreements	1st July 2021	The Bill proposes to give effect to multilateral agreements and treaties relating to international tax compliance and prevention of evasion of tax or exchange of information as provided in the agreements and treaties. Under the proposed provision information shall not be disclosed except in accordance with the conditions specified in the agreements.
Unit of currency for non-resident persons carrying on business through a digital marketplace		The Finance Act proposes to allow non-resident persons (without resident personal representatives and permanent establishments) carrying on business through a digital marketplace to use convertible foreign currency as may be approved by the commissioner as the unit of currency in books of accounts, records, paper registers, tax returns or tax invoices.
Abandonment of tax	1st July 2021	Section 37(1) of the TPA provides that the Commissioner, may abandon collection of taxes.
Relief from tax in certain cases		Deletion of Section 37A of the TPA in its entirety. The amnesty for rental income was limited to years 2013 to 2015.
Removal of Withholding VAT exemption provisions		The Finance Act has deleted section 42A(4A), removing the option for qualifying suppliers to apply to the Commissioner for exemption from the provision of WH VAT.
Refund of overpaid tax		The Finance Act provides that when an overpayment is applied in accordance with Section 47(4)(a) and (b), interest and penalties will not accrue on the amount applied to the payment of outstanding tax from the date of notification of the ascertainment that tax was overpaid. If there is outstanding liability after the application, the outstanding tax will continue to accrue interest and penalties.
Due date for submission of notice objection	1st July 2021	The FA 2021 clarifies that should the due date for submission and payment of taxes due fall on a weekend or a public holiday, the due date is deemed to be the previous working day excluding

		those submitting a notice of objection, tax return or a tax payment electronically. The due dates will remain as stipulated in law for any electronic tax filings and payments.
The Common Reporting Standard	1st July 2021	<p>The FA 2021 has introduced and defined principles that will govern the application of the Common Reporting Standard in Kenya as follows:</p> <p>Common Reporting Standard: this is defined to mean reporting and due diligence standard for the automatic exchange of financial account information.</p> <p>Financial Institution: means a custodial institution, a depository institution, an investment entity, or a specified insurance company.</p> <p>Kenyan Financial Institution: means any financial institution that is resident in Kenya and does not include any branch of that financial institution that is located outside Kenya or any branch of a financial institution that is not resident in Kenya if that branch is in Kenya</p>
Penalties for non-compliance with common reporting standard obligations	1st July 2021	<p>The following shall be penalties for noncompliance with common reporting standard obligations:</p> <ul style="list-style-type: none"> <li>● A penalty of KES 100,000 for each false statement or imprisonment for a term not exceeding three years.</li> <li>● A penalty of KES 1,000,000 where a financial institution fails to file a return.</li> <li>● A general penalty of KES 20,000 and an additional KES 20,000 per day for each day during which non-compliance continues for a period not exceeding sixty days.</li> </ul>
Assistance with collection of DSTS	1st July 2021	Commissioner shall seek intervention of a relevant authority in the collection of tax where a person who provides services over the internet or an electronic network including through a digital marketplace has not fulfilled the person's tax obligations.
Requirement for a tax pin to sell goods and services over a digital marketplace	1st July 2021	The selling of goods and services over a digital marketplace as a transaction shall require a tax pin.
Confidentiality in administration of Tax Law	1st July 2021	The confidentiality scope on information disclosure as stipulated under the TPA has been expanded to include conditions specified in Multilateral Agreements and Treaties relating to the exchange of information on tax matters. The issues handled under such arrangements shall be guided by the Agreements and Treaties between the two Contracting states.



+254 721 587 039, +254 733 587 039

[info@taxplan.co.ke](mailto:info@taxplan.co.ke), [admin@taxplan.co.ke](mailto:admin@taxplan.co.ke)

Suite D3, 3rd Floor, Machera Court, Komo Lane Off Wood Avenue, Kilimani.