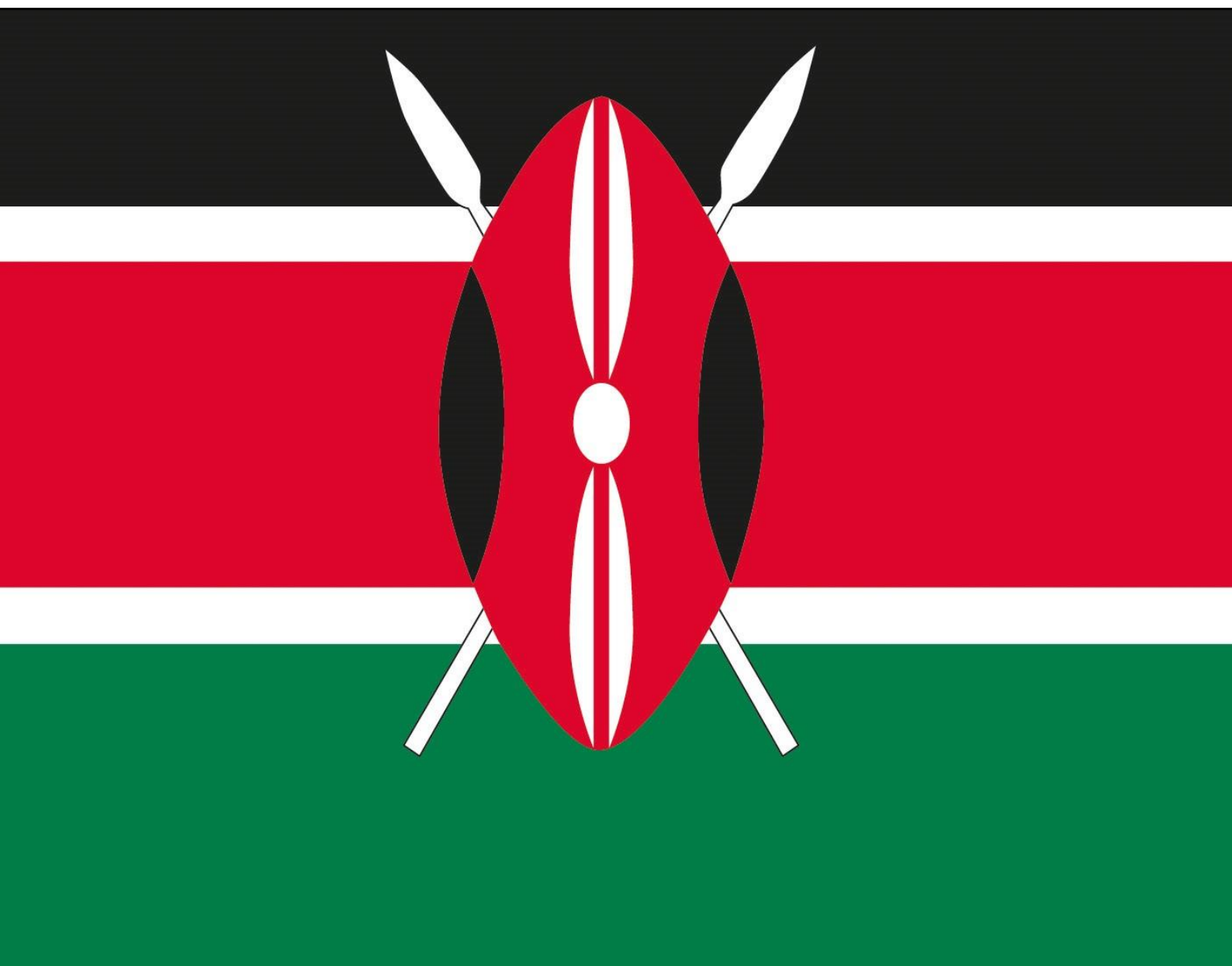


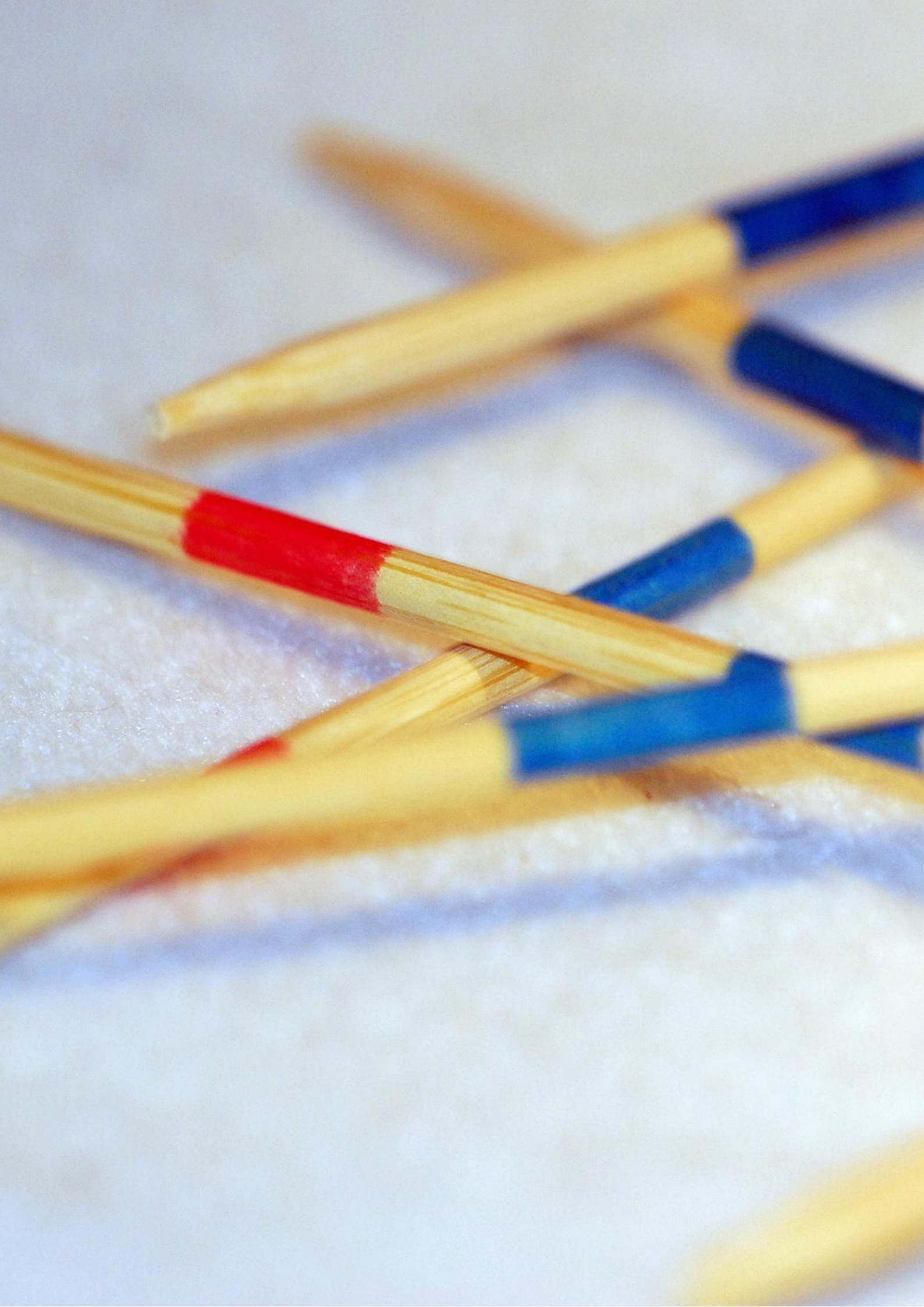
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Read in this issue:

- 🇰🇪 Background
- 🇰🇪 VAT Act changes
- 🇰🇪 Income Tax Act changes
- 🇰🇪 Excise duty Act changes
- 🇰🇪 Other changes in tax laws
- 🇰🇪 Miscellaneous changes
- 🇰🇪 Appendices



→ Background

The President of the Republic of Kenya assented to Finance Bill 2022 on 21st June 2022. Finance Act 2022 has largely approved the proposals under Finance Bill 2022 touching on Income tax, VAT, Excise duty and Miscellaneous fees and levies.

In this issue we have outlined the changes under Finance Act 2022 and commented on their intended effects.

→ VAT Act changes

New VAT on LPG gas

A tax rate of 8% has been introduced on supply of liquefied petroleum gas including propane. The rate is similar to the petroleum products under Section B of Part I of the First Schedule to the VAT Act.

Comment: LPG is commonly used in many household kitchens and food shops. The VAT cost will definitely feed into the fast-rising inflation rate in Kenya.

Enforcement of TIMS project

The VAT provision for claiming of input tax now has a prerequisite condition for claiming in the same period as *'the tax period in which the supply or importation occurred'*. This sets pace for the intended rollout date of the new electronic tax invoice devices under the Tax Invoice Management System (TIMS) project.

Comment: The six-month time limit for claiming input taxes is still in place on condition that the input tax invoices are not received by registered persons on time. However, the TIMS project will ultimately achieve the real-time recognition of input tax invoices in the month of supply, if successful.

Input tax documentation for imported petroleum products

The importers of petroleum products cleared through a non-bonded facility will be required to claim input tax after possessing the custom entry showing the name and PIN of the winner of the Open Tender System (OTS), and the name of the other oil marketing company participating in the tender.

Comment: This requirement is in reaction to a recent ruling at the Tax Appeals Tribunal where the Kenya Pipeline Company was ruled not to be responsible for VAT lost in leakages from its pipe network. The tax on leakages will now be accounted for under the Customs law.

Refund of VAT incurred by OAFP suppliers

The input VAT claimed by a manufacturer that supplies to an official aid funded project (OAFP) as approved by the Treasury Cabinet Secretary will be allowed to claim for refund of the same.

Comment: This will address the concern and challenge experienced by registered persons who largely supply to OAFPs and lacked a means of recovering the VAT cost on their inputs.

Clarifications on VAT on Digital Marketplace Supplies

The Act has redefined a digital marketplace as *'an online platform which enables users to sell goods or provide services to other users'*.

The Act has exempted digital marketplace supplies or supplies made over the internet or an electronic network from reverse VAT (VAT on imported services).

Finally, the Act has clarified that the Kes. 5 million annual turnover requirement for compulsory registration of VAT obligation will not apply to digital marketplace supplies.

Comment: The exclusion of 'property' in the definition of digital marketplace realigns applicability of this tax to items already defined under 'supply' in the VAT law. The removal of the turnover threshold condition also reaffirms the intention to bring all non-resident players in the dig-

ital economy to tax. However, the adding of a provision after Section 10(1) of the VAT Act will repeal the applicability of VAT on imported services in B2B transactions. This affects the equity in taxation of imported services since B2B transactions carried over an online platform will be exempted.

Reinforcing the VAA Control Mechanism

An additional condition for claiming of input VAT has been enacted as:

(f) any other documentation that the Commissioner may require for the purposes of validating the input tax

Comment: The implementation of the VAT Auto-Assessments (VAA) control mechanism by the KRA was halted by the Courts since it requested for supporting documents (such as confirmation letters from suppliers) that are not provided for in Law. The Finance Act 2022 now counters the court ruling by giving discretion on type of evidence to the KRA.

Penalties for Offences relating to VAT on imports

The late payment interest applicable to late payment of VAT on importation of goods (imposed by the Commissioner of Customs) will be 1% per month and not 2% as per the Customs Law. The duplum rule will also be applicable.

Comment: This harmonization of the late payment interest has brought equity in law.

Changes to the First Schedule to the VAT Act (Exempted Supplies)

The following items are deleted from the list of exempted supplies:

- i. Fertilisers of Chapter 31
- ii. The exportation of taxable services.

On the other hand the following items are included in the list of exempted supplies:

- i. Bioethanol vapour (BEV) Stoves classified under HS Code 7321.11.00 (cooking appliances and plate warmers for liquid fuel)
- ii. Plant and machinery of chapter 84 and 85 imported by manufacturers of pharmaceutical products or investors in the manufacture of pharmaceutical products upon the recommendation of the Cabinet Secretary responsible for matters relating health.
- iii. Medical oxygen supplied to registered hospitals.

iv. Urine bags, adult diapers, artificial breasts, colostomy or ileostomy bags for medical use.

v. Inputs and raw materials used in the manufacture of passenger motor vehicles.

vi. Locally Manufactured passenger motor vehicles. "locally manufactured passenger motor vehicle" shall mean a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose ex-factory value comprises at least 30% of local content.

vii. Taxable goods, inputs and raw materials imported or locally purchased by a company which is-

(a) engaged in business under a special operating framework arrangement with the Government; and

(b) incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least ten billion shillings,

subject to approval of the Cabinet Secretary for the National Treasury, on recommendation of the Cabinet Secretary for health.

viii. Such capital goods the exemption of which the Cabinet Secretary may determine to promote investment in the manufacturing sector: Provided that the value of such investment is not less than Kes. 2 billion.

Comment: The additions here reflect the deliberate effort to attain the Manufacturing pillar of the Government's Big 4 Agenda, especially in the pharmaceutical sector. The recent investment by a European vaccine manufacturer confirms the incentives promised to them.

Changes to the Second Schedule to the VAT Act (Zero-rated Supplies)

The following items are added to the list of zero-rated supplies:

- i. The exportation of taxable services in respect of business process outsourcing (BPO).
- ii. Fertilizers of chapter 31.
- iii. Inputs or raw materials locally purchased or imported by manufacturers of fertilizer as approved from time to time by the Cabinet Secretary responsible for Agriculture.

Additionally, the following items are deleted from the list of zero-rated supplies:

1. Articles of apparel, clothing accessories and equipment specially designed for safety or protective purposes for use in registered hospitals and

clinics or by county government or local authorities in firefighting.

Comment: The abrupt inclusion of the reclassified fertilizer-related items (not originally in Finance Bill 2022) recognizes the current inflation in food prices due to shortage. It is also worth

noting the standard rating of exported services except for those relating to BPO services. There will be need for defining BPO services.

Finally, the commitment by Kenya to abide by the letter and spirit of the OECD guidelines especially on neutrality of VAT is now highly in doubt. Many multinationals will now lose hope in Kenya's commitment to harmonize and standardize tax laws with other countries.

→ Income Tax Act changes

New Definition of Residency for Individuals

The Act has defined '*permanent home*' to mean:

- a place where an individual resides or which is available to that individual for residential purposes in Kenya, or
- where in the opinion of the Commissioner the individual's personal or economic interests are closest.

Comment: This new definition is consistent with current international practice as adopted in anti-double taxation treaties and OECD BEPS Action plan recommendations that aim at eliminating double non-taxation.

Taxation of gains made from Commodity Markets outside Kenya

The gains from financial derivatives (excluding those traded at the NSE) will be taxed at a rate of 15%.

Comment: This is another measure recommended under Action 2 of the BEPS Action Plans that will prevent exemption of payments made to outside Kenya from financial derivatives contracts whose obligations are deductible by the Kenyan payor. Secondly it will boost the local market for financial derivatives.

Widening of Tax Allowable Charitable Donations

It has been enacted that charitable donations made to any project approved by the Treasury Cabinet Secretary shall be deductible when computing income tax, in addition to charitable organizations in possession of income tax exemption certificates.

Comment: These discretionary powers bestowed on the Treasury Ministry should be regulated to avoid favoritism or interfering with equity in tax administration.

Capital Gains Tax

The Act has increased the capital gains tax rate from 5% to 15%. However the old rate will apply for firms certified by the Nairobi International Financial Centre Authority that—

- (a) invest Kes. 5 billion in Kenya; and
- (b) the transfer of such investment is made after 5 years,

Comment: This increase of 300% may appear too high, but will also call for recognition of factors such as inflationary adjustments on the purchase cost of assets. This will also increase the transaction costs of capital transfer, especially on shares and land.

Taxation of digital services

The applicability of digital service tax to non-residents who earn from services carried over the internet or through a digital marketplace has been clarified to exclude those with permanent establishments in Kenya. The tax rate will remain at 1.5%

Comment: The clarification here reaffirms the fact that permanent establishments must compute their taxable income accruing from Kenya and account for corporate tax.

Update on Thin Capitalization Provisions

The Act has amended the current provisions on deductibility of foreign exchange losses from related party loans taken by thinly capitalized

companies. The same restriction applied to interest exceeding 30% of the company's EBITDA in any year will now apply to forex losses.

The entities exempted from this restriction rule are Non deposit taking microfinance businesses under the Microfinance Act, 2006, entities licensed under the Hire Purchase Act in addition to the following new entities that will also be exempted from interest restriction:

- i. companies undertaking the manufacture of human vaccines;
- ii. companies engaged in manufacturing whose cumulative investment in the preceding five years from the commencement of this provision is at least five billion shillings;
- iii. companies engaged in manufacturing whose cumulative investment is at least five billion shillings;
- iv. Provided that the investment shall have been made outside Nairobi City County and Mombasa County; and
- v. holding companies that are regulated under the Capital Markets Act.

Comment: Once more the intention to boost foreign direct investments by manufacturers has been reaffirmed.

Clarification on Taxation of ESOPs

The time for accounting for the employment benefit in Employee Share Ownership Plans (ESOPs) will be specified as *exercise date*. The taxable value will also be:

$$\begin{aligned}
 &(\text{offer price per share, at the date the option is} \\
 &\quad \text{granted by the employer}) \\
 &\quad - \text{ minus -} \\
 &(\text{market value, per share on the date when the} \\
 &\quad \text{employee exercises the option})
 \end{aligned}$$

Finally the requirement for registration of the ESOP as a collective investment scheme under the Capital Markets Authority (CMA) Act is abolished.

Comment: This change will finally address the concern that has always arisen on applicability of PAYE to employees who fail to exercise their right in an ESOP. The requirement for registration of an ESOP with the CMA has also been impractical where an employer is not a publicly listed entity.

Additional Clarity on Capital allowances

- Independent power production will now qualify as 'manufacture' regardless of whether the power is supplied to the national grid.
- The investment allowance on purchase or acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator will be confirmed to be 10% p.a. on a straight line basis as set out under the Second Schedule to the Income Tax Act.

Comment: The removal of the condition to supply power to the national grid to qualify for investment deduction is a welcome move especially for players in renewable energy sector.

Changes in Preferential Tax Regime concept

The taxation of businesses in a preferential tax regime will be extended to include:

- an associated enterprise of a non-resident person located in a preferential tax regime; and
- a permanent establishment of a non-resident person operating in Kenya where the non-resident person is located in a preferential tax regime

The new definition of a *preferential tax regime* will be:

- a. any Kenyan legislation, regulation or administrative practice which provides a preferential rate of tax to such income or profit, including reductions in the tax rate or the tax base; or
- b. a foreign jurisdiction which -
 - i. does not tax income;
 - ii. taxes income at a rate that is less than 20%;
 - iii. does not have a framework for the exchange of information;
 - iv. does not allow access to banking information; or
 - v. lacks transparency on corporate structure, ownership of legal entities located therein, beneficial owners of income or capital, financial disclosure, or regulatory supervision.

Comment: These changes will fully embrace the recommendations under the OECD BEPS Action Plan 5 that counters harmful tax practices by taking into account transparency and requiring substantial activity for any preferential regime.

Country-by-country Reporting Guidelines

The Act has now incorporated the previously published draft C-by-C guidelines into the Income Tax Act. The guidelines now specify the compliance threshold, timelines and manner of reporting and filing returns. We have outlined and discussed these guidelines in our separate detailed Tax Alert.

Comment: This will adopt the recommendations under Action 12 of the OECD BEPS Action plans regarding the design of mandatory disclosure rules for aggressive or abusive transactions, arrangements, or structures, taking into consideration the administrative costs for tax administrations and businesses and drawing on experiences of the increasing number of countries that have such rules.

Lowered tax rate for Human Vaccine manufacturers

The specified lower tax rates agreed between the Government and investors under the Special Operating Framework arrangement shall now be operative. This relates to companies that meet the following criteria:

- engage in business under a special operating framework arrangement with the Government;
- incorporated for purposes of undertaking the manufacture of human vaccines; and
- whose capital investment is at least Kes. 10 billion

Comment: This legitimizes the recent tax arrangements that the Government signed with a renown global human vaccine manufacturer who confirmed willingness to set up in Kenya.

Additional exempted incomes

The following incomes will now be exempted from income tax:

- Deemed interest in respect of an interest free loan advanced to a company undertaking the manufacture of human vaccines.
- Payments made to non-resident service providers not having a permanent establishment in Kenya in respect of services provided to a company undertaking the manufacture of human vaccines.
- Compensating tax accruing to a company undertaking the manufacture of human vaccines.

- Dividends paid by a company undertaking the manufacture of human vaccines to any non-resident person.
- Income of a company undertaking the manufacture of human vaccines.
- Dividends paid by Special Economic Zone enterprises, developers and operators licensed under the Special Economic Zones Act.
- Dividends paid by Special Economic Zone enterprises, developers and operators to any non-resident person.

Comment: This will adopt the recommendations under Action 12 of the OECD BEPS Action plans regarding the design of mandatory disclosure rules for aggressive or abusive transactions, arrangements, or structures, taking into consideration the administrative costs for tax administrations and businesses and drawing on experiences of the increasing number of countries that have such rules.

Other changes to income tax rates

The following new tax rates will apply from 1st July 2022 (except for the last item):

Income type	Tax rate
Company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority	15% for the first 10 years from the year of commencing operations
Company operating a shipping business in Kenya	15% for the first 10 years from the year of commencing operations
Interest and deemed interest arising from a bearer bond issued outside Kenya of at least 2 years duration and interest, discount or original issue discount	7.5% of the gross sum payable
Gains from financial derivatives	15% of the gains

Comment: The focus on the recently launched Nairobi International Financial Centre has now been promoted by tax incentives. Similarly, the blue economy is still in the Government's radar with a tax rebate for investors in shipping business.

→ Excise duty Act changes

Power to exempt specified products from inflationary adjustment

The KRA, with approval from the Treasury Cabinet Secretary, will have the powers to exempt specified products from inflation adjustment based on prevailing economic conditions.

Comment: This is a safeguard that is set to cushion prices of basic commodities that currently feed inflation, such as food and fuel.

Harmonization of penalties and interest on imported excisable items

The applicable penalty and interest rates will be those specified in the Tax Procedures Act and not the EACCMA e.g. late payment interest will be 1% and not 2%.

Comment: This intervention will promote equity in taxation.

The changes to the First Schedule to the Excise Duty Act, 2015 is tabulated below:

Description	Old rate	New rate
Electronic cigarettes	Shs. 3,787 per unit	Nil
Cartridge for use in electronic cigarettes	Shs. 2,525 per unit	Nil
Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	Shs. 12.17 per litre	Shs. 13.30 per litre
Cosmetics and beauty products of tariff heading No. 3303, 3304, 3305 and 3307	10%	15%
Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices	Shs. 6.03 per litre	Shs. 6.03 per litre
Beer, cider, perry, mead, opaque beer, and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%	Shs. 121.85 per litre	Shs. 134 per litre

Description	Old rate	New rate
Powdered beer	Shs. 121.85 per kg	Shs. 134 per kg
Cigarettes without filters (plain cigarettes)	Shs. 2,502.74 per mille	Shs. 2,752.97 per mille
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Shs. 208.20 per litre	Shs. 229 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%	Shs. 278.70 per litre	Shs. 335.30 per litre
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Shs. 13,906.04 per kg	Shs. 15,296.6 per kg
Cigarette with filters (hinge lid and soft cap)	Shs. 3,447.61 per mille	Shs. 3,825.99 per mille
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences"	Shs. 9,734.45 per kg	Shs. 10,707.88 per kg

Description	Old rate	New rate
Imported sugar confectionary of tariff heading 17.04	Shs. 36.74 per kg	Shs. 40.37 per kg
Imported white chocolate, chocolate in blocks, slabs, or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00	Shs. 220.31 per kg	Shs. 242.29 per kg
Jewelry of tariff heading 7113 and imported jewelry of tariff heading 7117	10%	15%
Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences	Shs. 1,259.64 per kg	Shs. 1,500
Articles of plastic of tariff heading 3923.30.00 and 3923.90.90	10%	10%
Imported furniture of any kind used in offices, kitchen, bedroom and other furniture	25%	0%

Description	Old rate	New rate
Imported potatoes, potato crisps and potato chips of tariff heading 07.01 and imported potatoes of tariff numbers 0710.10.00, 2004.10.00 and 2005.20.00	25%	25%
Electronic cigarettes and other nicotine delivery devices	Nil	40%
Liquid nicotine for electronic cigarettes	Nil	Shs. 70 per millilitre
Imported ready to use SIM cards	Nil	Shs. 50 per SIM card
Imported Unsaturated polyester (3907.91.00)	10% (including local)	10%
Imported Alkyd (3907.50.00)	10% (including local)	10%
Imported Emulsion VAM (3905.91.00)	10% (including local)	10%
Imported Emulsion - styrene Acrylic (3903.20.00)	10% (including local)	10%
Imported Homopolymers (3905.19.00)	10% (including local)	10%
Imported Emulsion B.A.M (3906.90.00)	10% (including local)	10%
Fees charged by digital lenders	0%	20%
Imported cellular phones	0%	10% of excisable value
Neutral spirit imported or purchased locally by registered pharmaceutical manufacturers upon approval by the Commissioner.	Shs. 253 per litre	Exempt
Locally manufactured passenger motor vehicles	20% - 35%	Exempt

→ Other changes in tax law

Tax Procedures Act: Monitoring of Trust activities

Trusts will now be required to notify the Commissioner of any changes in the full identity and address details of both trustees and beneficiaries regardless of whether they are engaged in business activities.

Furthermore, presentation of a PIN will be a condition for registration of a Trust.

Comment: These will complement last year's efforts to promote trusts as a vehicle in inheritance matters and enhance tax compliance and monitoring by the KRA.

Tax Procedures Act: Amendment of VAT returns

The time limit for recognizing input tax when amending VAT returns will be within 6 months after the end of tax period in which the supply or importation occurred.

Comment: This is in reaction to a recent decision at the Tax Appeals Tribunal which had ruled otherwise by allowing input taxes that were within 6 months from the return period (and not after tax period in which the supply or importation occurred).

Tax Procedures Act: Widening the scope of properties qualifying as security for unpaid tax

The properties that qualify as security for unpaid tax will now include land or building, aircraft, ship, motor vehicle or any other property which the Commissioner may deem sufficient to serve as security for unpaid taxes.

Furthermore, where the taxpayer fails to pay the liability described, the KRA may at the cost of the taxpayer dispose the property that is the subject or restraint on disposal, mortgage or charge by public auction or private treaty; except for where a payment plan has been agreed between the Commissioner and taxpayer.

Comment: This will strengthen KRA's tax enforcement measures. It casts doubt on KRA's commitment of being a "service" instead of an "authority".

Tax Procedures Act: Streamlining of Tax refund rules and processes

- The time limit for applying VAT refunds has been reduced to 6 months.
- Introduction of 90 days' time limit within which KRA is required to process any tax refund claims.
- Introduction of a 2-year time limit within which to refund overpaid taxes. Failure by KRA to honor this timeline will lead to accrual of interest at a rate of 1% per month.
- Offset of overpaid instalment taxes – Taxpayers will now have an opportunity to offset overpaid instalment taxes against future instalment tax liabilities.
- Definition of taxes paid in error – Tax paid in error has been defined to mean any tax paid which the Commissioner is satisfied ought not to have been paid.
- Treatment of delayed VAT exemption certificates – VAT registered suppliers will be required to collect VAT on items whose exemption processes are underway. Thereafter, the KRA will refund such Taxpayers after completion of the exemption process as "tax paid in error".

Comment: This is in response to a successful Tax Appeal case filed by Rödl & Partner on behalf of a client that sought to compel the KRA to immediately settle outstanding VAT refunds in accordance with the taxpayer's constitutional right to fair administrative action.

According to the Fair Administrative Action Act, administrative laws must specify timelines and avoid leaving them at the discretion of administrators.

Tax Procedures Act: Streamlining of Tax Dispute Resolution Processes

The following timelines will be introduced in the Tax Appeal process:

- 14 days within which KRA is supposed to invalidate an objection application.
- 14 days within which KRA is supposed to communicate its decision on a late application for objection.
- KRA shall make an objection decision within 60 days from the date of receipt of a valid notice of objection.

Comment: This will eliminate the delays in cases awaiting objection validation and approval of late objections. Indeed, justice delayed is justice denied.

Tax Procedures Act: Curbing KRA enforcement measures through Agency notices

The period within which an agent is required to notify the Commissioner of lack of monies held on behalf of, or due to a taxpayer has been extended from 7 days to 14 days. In addition, the Commissioner has been guided as follows:

- i. To serve the taxpayer with a copy of agency notice when serving the agent.
- ii. Not to issue an agency notice unless the Commissioner has either confirmed its assessment through an Objection Decision and the taxpayer has defaulted to appeal to the Tax Appeals Tribunal within the prescribed timelines.

Comment: These safeguards will ensure KRA does not abuse its powers of enforcement through Agency notices.

Tax Procedures Act: Exemption from withholding VAT

The income of manufacturers whose value of investment in the last 3 years from 1st July 2022 is at least Kes. 3 billion, shall be exempted from withholding VAT.

Comment: This will reduce the capital outlay for manufacturers before their payback time.

Tax Procedures Act: Exemption from duty on some EPZ supplies

The supply by an EPZ of currency notes and coins imported by the Central Bank of Kenya is exempted from the 2.5% duty on goods entered for home use from an export processing zones enterprise.

Miscellaneous Fees and Levies Act

Tariff	Description	Old rate	New rate
Export levy changes			
2601	Iron cores and concentrates, including roasted iron pyrites	Exempt	USD 175
	Currency notes and coins entered for home use from an EPZ enterprise by the Central Bank of Kenya	2.5% of Customs value	Exempt
Exemption from Import Declaration Fee			
Inputs and raw materials imported by manufacturers of pharmaceutical products on the recommendation of the Cabinet Secretary for Health		-	Exempt
Goods imported for use in the construction and maintenance of human vaccine manufacturing plants as approved by the Cabinet Secretary for National Treasury on recommendation of the Cabinet Secretary for Health		-	Exempt
Goods, inputs and raw materials imported by a company which is – (a) engaged in business under a special operating framework arrangement with the Government; and (b) incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least Kes. 10 billion, subject to approval of the Cabinet Secretary for National Treasury, on recommendation of the Cabinet Secretary for Health		-	Exempt
Exemption from Railway Development Levy			
Inputs and raw materials imported by manufacturers of pharmaceutical products on the recommendation of the Cabinet Secretary for Health		-	Exempt
Goods imported for use in the construction and maintenance of human vaccine manufacturing plants as approved by the Cabinet Secretary for National Treasury on recommendation of the Cabinet Secretary for Health		-	Exempt

Goods, inputs and raw materials imported by a company which is – (a) engaged in business under a special operating framework arrangement with the Government; and (b) incorporated for purposes of undertaking the manufacture of human vaccines; and whose capital investment is at least Kes. 10 billion, subject to approval of the Cabinet Secretary for National Treasury, on recommendation of the Cabinet Secretary for Health	-	Exempt
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→ Other Miscellaneous changes

Amendment to Section 133 of the Evidence Act

Section 133 of the Evidence Act provides that no judge, magistrate, or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the law relating to the public revenue or to income tax, customs or excise.

Comment: The amendment seeks to refine definition of a revenue officer. Revenue officer in the bill has been defined to mean any officer employed in or about the business of any public office for the collection of public revenue.

Amendment to section 21 of the Statutory Instruments Act

A Statutory instrument is any rule, order, regulation, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, guideline, or other statutory instrument issued, made, or established in the execution of a power conferred by or under an Act of Parliament. Statutory Instruments are automatically revoked 10 years after being enacted. The Finance Act amended section 21 of the Statutory Instruments Act and excluded instruments under the Income Tax Act, Stamp Duty Act, Value Added Tax Act, 2013, Tax Appeals Tribunal Act, 2013, Excise Duty Act 2015, and Tax Procedures Act, 2015 from automatically lapsing after 10 years.

Comment: Automatic revocation of instruments associated with revenue collection may hamper collection efforts and this is the mischief the amendment seeks to cure. This was necessitated by a recent court case that nullified the VAT Regulations. Parliament has now been given a

timeline stretching between 2023 and 2025 to approve the tax-related statutory instruments.

Amendment to Unclaimed Financial Assets Act, 2011

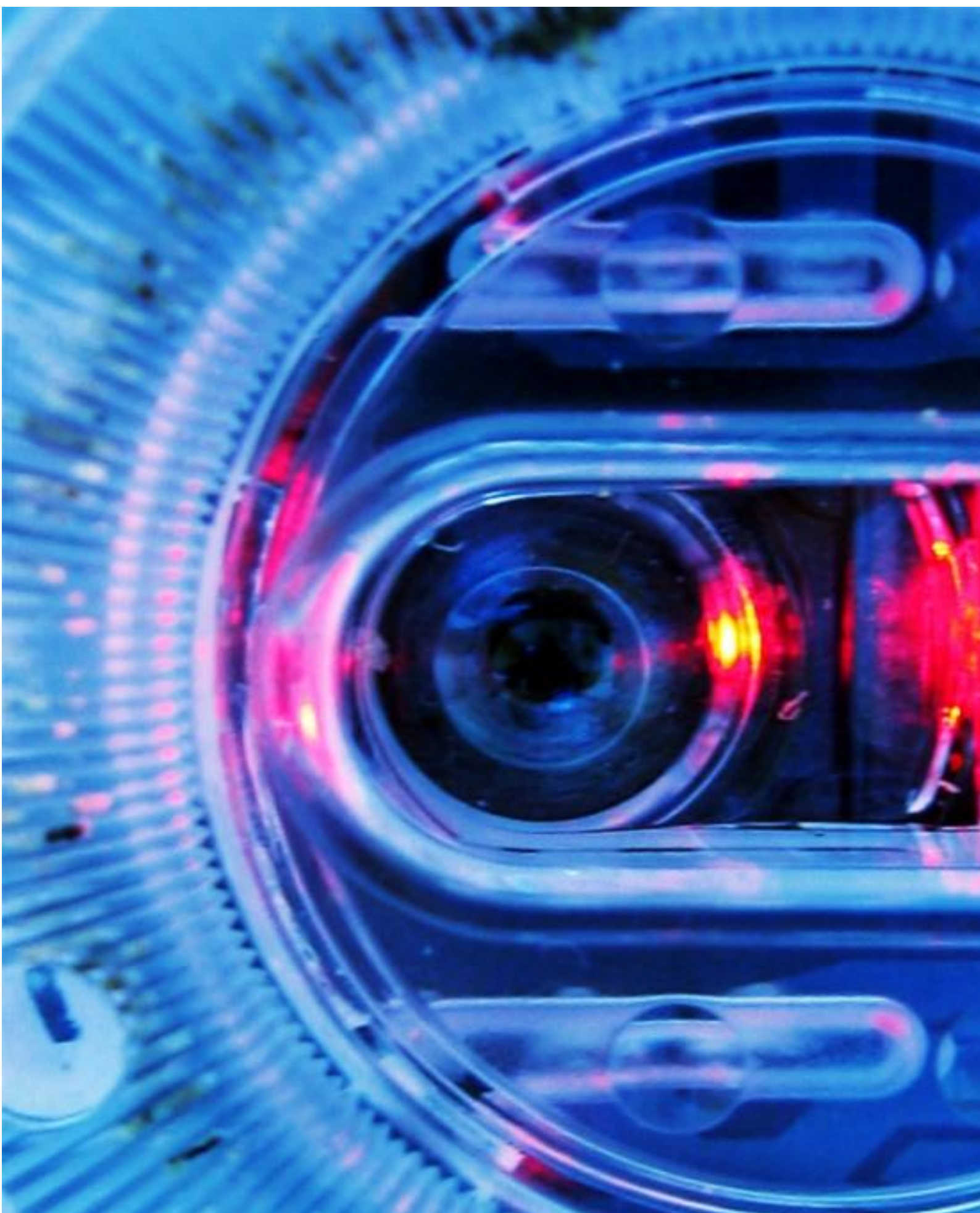
The Finance Act further did amendment to the Unclaimed Financial Assets Act to encourage compliance with its provisions. It has capped the number of penalties imposed to the value of the asset found to be reportable and recoverable. It has given the CS authority to waive payment of penalties and fines to facilitate disclosure by the person holding the securities when it is otherwise justifiable or in the public interest to do so.

It has established the Voluntary Unclaimed Financial Assets Disclosure Programme to run for 12 months where holders of assets may disclose, report, or deliver unclaimed assets and be granted relief from penalties and interest in that otherwise be imposed. The programme will only be applicable to assets held up to 30 June 2022.

Amendment to Capital Markets Act

The amendments to section 29 affect all categories of licencees however. They removed the requirement for licencees to be companies with a minimum prescribed share capital requirements to allow for other types of legal entities. They also expanded the persons required to have the necessary qualifications beyond a director and CEO, to other persons within the business who may manage or supervise the business.

Comment: The amendments will ease the requirements for one to provide 'investment advisory services' to address a shortfall in the industry.



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