PETROLEUM INSTITUTE OF EAST AFRICA

FINANCE ACT, 2022

KRA VIRTUAL SENSITIZATION FORUM

7th July 2022 9.00 am – 12.00pm

Highlights for the Petroleum Sector

INTRODUCTION

Key Highlights

- On 7th of July 2022, Industry virtually met with the Kenya Revenue Authority (KRA) led by Maurice Oray, the KRA Head of Corporate Policy, for the sensitization tax payers and stakeholders on the changes in the enacted Finance Act, 2022.
- Mr. Oray, stated that the amendments which focused mainly on imports were largely drawn in support of the Big Four Agenda on food security, affordable housing, universal health care, manufacturing and Job creation
- The tax amendments that have been introduced through the Finance Act, 2022 impact among others the following Acts:
    - Income Tax Act
    - VAT Act, 2013
    - Excise Duty Act, 2015
    - Tax Procedures Act, 2016
    - Miscellaneous Fees and Levies Act, 2016
    - Other Acts: Stamp Duty Act, Statutory Instruments Act, Evidence Act, Betting, Lotteries and Gaming Act

KRA Customs Department will have a separate engagement with Industry that will articulate the issues that affect Customs Duty exhaustively and the recently enacted amendments in the East African Community Customs Management (Amendment) Act (EACCMA)

Below are the outcomes of the meeting with a highlight on those affecting the petroleum Industry:

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Income Tax Act

Amendments affecting the Income Tax Act

PROVISION	EFFECTIVE DATE
Introduction of a definition for fair market value	1st July 2022
Introduction of withholding tax of 15% on financial derivative	1st January 2023
Definition of "permanent home".	1st July 2022
Foreign exchange losses deductible by a business limited to 30% of EBITDA with exemption provided to among other entities licensed under the Hire Purchase Act and persons exempt under section 16(2)(j)	1st July 2022
Requirement for Commissioner to extend carry forward of losses no longer necessary	1st July 2022
Exemption from interest restriction: • Companies engaging in manufacturing whose cumulative investment in the preceding five years from the commencement of this provision is at least five billion shillings • Companies engaging in manufacturing whose cumulative investment is at least five billion shillings – outside Nairobi and Mombasa	1st July 2022
Widening the scope of taxation of income from transactions between related parties to include those within a preferential tax regime	1st January 2023
Requirements for members of a Multinational Enterprise Group to file Country-by-Country Reports (CbCR)	1st July 2022
Filing of Country-by-Country Report master file and local file by Ultimate Parent Entity or constituent entity of a multinational enterprise group	1st July 2022
Capital gains tax (CGT) increased from 5% to 15%	**1st January 2023**

Key Highlights

- Despite, its numerous use, the term Fair Market Value was previously not defined in the Income Tax Act. The introduction of this definition will preempt existing and future disputes arising in relation to valuation of perceived controlled transactions and non cash benefits undertaken by taxpayers.
- The introduction of the definition of financial derivatives is aligned to the introduction of additional charging sections, Section 3(2) I and Section 9 (3) & (4) bringing to the realm of taxation, gains derived by non-resident persons from financial derivatives.
- The amendment on foreign exchange losses deductible aims to align the revamped definition of thin capitalization introduced in the Finance Act, 2021 to the treatment of foreign exchange gains/losses. This will bring more harmony in the operations and interpretation of the various Sections of the Income Tax Act.
- The requirement for the Commissioner to extend carry forward of losses was a necessary clean up considering this Section was no longer relevant following prior amendments introduced in the Finance Act, 2021 providing for allowability to carry forward the tax losses indefinitely until the loss is fully extinguished.

Income Tax Act continued

Amendments affecting the Income Tax Act

PROVISION	EFFECTIVE DATE
Incomes exempt from tax: • Dividends paid by SEZ enterprises, developers and operators • Dividends paid by SEZ enterprises, developers and operators to any non-resident person	1st July 2022
Amended to allow transformation and distribution of electricity off-grid to qualify as manufacture and therefore claim 100% investment allowance	1st July 2022
Allow investment allowance of 150% where the cumulative investment up to 4 years before 1st July 2022 or 3 years after the said date is KShs. 2 billion outside Nairobi and Mombasa	1st July 2022
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 commencement of its operations	1st July 2022

Key Highlights

- The amendments on gains of a business in a non preferential tax regime bring in more clarity in taxation of transactions with entities operating in preferential trade regimes.
- While CbCR was introduced through the Finance Act, 2021, the detailed guidelines introduced in the Finance Act, 2022 are necessary to create a framework for operationalization of the same. However, there is still need for further Regulations to guide operationalization of this requirement.
- It is also imperative to appreciate the increased interest in investment schemes in the recent past. Special Economic Zones, for instance, have over the recent years attracted significant interest with both local companies and multinationals exploring this avenue. This interest is mostly garnered through various tax incentives such as reduced corporation tax rates.

- The Finance Act, 2021 introduced incentives for capital investments and exemptions from minimum tax exhibiting the keen interest the Government is taking to market this scheme. This amendment is therefore an effort to ensure that there is no shift of gains or profits to these entities operating in the preferential tax regime thereby creating a distortion in the market.
- The expansion of the term 'Manufacture' is a welcome move for manufacturers who generate electricity but not necessarily for supply to the national grid. We however note that the same amendment was included in the Finance Act,2021.
- The allowances for companies operating a carbon market exchange have been included to encourage investments in green energy and the overall reduction of carbon dioxide emissions over time

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VAT Act

Amendments affecting the VAT Act

PROVISION	EFFECTIVE DATE
VAT tax rate on the supply of LPG including propane at 8%	1st July 2022
Clarify that input VAT can only be deducted in a return for a period	1st July 2022
Input VAT claim in respect of Open Tender System for importation of Petroleum and Petroleum products cleared through a non-bonded facility: ▪ **Customs entry to contain name of the winner of the tender and the name of the other oil marketing participants in the tender** ▪ **Allow input tax that may have been incurred by an oil marketing company participating in the Open Tender System before this amendment to be claimed within 12 months after this amendment**	**1st July 2022**
Penalties and interest applicable on VAT on imported goods – Aligned to the Tax Procedures Act (TPA)	1st July 2022
Deletion of provision for refund of tax in error – provided under the Tax Procedures Act (TPA)	1st July 2022

Key Highlights

- The halving of VAT on LPG which is a basic commodity is a push for clean energy and is a positive move considering that Kenyans have over the ages been exposed to polluting sources of energy which negatively impact the quality of health and life
- The amendments on penalties and interests is occasioned by the coherence to have administrative requirements under the Tax Procedures Act.

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Tax Procedures Act

Amendments affecting the Tax Procedures Act

PROVISION	EFFECTIVE DATE
Amendment of return to claim input VAT – limit to 6 months (in line with Section 16. (1) of the VAT Act)	1st July 2022
Exclusion of registered manufacturers (value of investments is KShs. 3B in the preceding 3 years) from withholding VAT.	1st July 2022
Provision of additional options around refunds due to overpayments - Section 47 **(Tax payers can now apply for refunds or offset overpayments with existing tax liabilities)**	1st July 2022
Provision for mechanism for refund where taxes have been paid in error or on exempted or zero rated supplies	1st July 2022
Issuance of Objection decision: ▪ The Commissioner will be required to notify a taxpayer if their objection is invalidly lodged within 14 days ▪ The Commissioner to issue an objection decision within 60 days from the day of receiving a valid objection by a taxpayer	1st July 2022

Key Highlights

- ❑ The provision on the restriction the amendment of the
- ❑ taxpayer's deduction of input tax in relation to VAT within six months after the end of the tax period in which the supply or importation occurred, is a move to prevent taxpayers from claiming of input tax after expiry of the six months while amending their returns. This is line with provisions of Section 17 of the VAT Act.
- ❑ Tax payers can now apply for refunds or offset overpayments with existing tax liabilities.
- ❑ There are timelines for the Commissioner regarding issuance of objection decision as well as notifications for invalidly lodged applications.

Miscellaneous Fees and Levies Act

Amendments affecting the Miscellaneous Fees and Levies Act

PROVISION	EFFECTIVE DATE
Clarify that lower IDF and RDL shall be charged on raw materials and intermediate products imported by manufacturers	1st July 2022

Key Highlights

- Guidelines issued by National Treasury in collaboration with the KAM are already at work for lubricants manufacturing raw materials and additives.
- Push for the zero rating of import duty on lubricant raw materials (base oils and additives) is also ongoing with the KRA, KAM and relevant counterparts in the EAC

For further clarification on this advisory note and any other trade or tax related matter, please contact:

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