



EMERGING TAX UPDATES - 25 MAY 2021





WHAT YOU SHOULD KNOW

FINANCE BILL 2021

THIN CAPITALISATION - 1 JAN 2022

- Fundamentals changed for interest restriction

CONTROLLED TRANSACTIONS - 1 JULY 2021

- Expansion of the definition of "Control"
- Expansion of the definition of "Permanent Establishment"

COMMON REPORTING STANDARDS - 1 JULY 2021

- Automatic exchange of financial account information



WHAT YOU SHOULD KNOW

FINANCE BILL 2021

RECORD RETENTION - 1 JULY 2021

- Increasing retention requirements

CARRY FORWARD OF UNABSORBED TAX LOSSES

- Sweetener

DOUBLE TAX AVOIDANCE ARRANGEMENTS

- Clarification



WHAT YOU SHOULD KNOW

FINANCE BILL 2021

EXPORT OF TAXABLE SERVICES - 1 JULY 2021

- Reversing global tax norms

REVERSE VAT - 1 JULY 2021

- Unregistered VAT persons under Net

SOLAR - 1 JULY 2021

- Consistency in tax policies



WHAT YOU SHOULD KNOW

FINANCE BILL 2021 - All below changes w.e.f 1 July 2021

VAT EXEMPTION

- Focus on healthcare sector

EXCISE DUTY EXEMPT

- Relief on some charges on loan
- Users of glass bottle

EXCISE DUTY LEVIABLE

- Discretionary/Non-essential consumption

THIN CAPITALISATION

CURRENT POSITION

1. Check presence of non-resident shareholders with voting rights (25% or more)
2. Debt to Equity Ratio of 3:1 or lower allowed

PROPOSED POSITION

1. Test of tax residency of shareholders removed
2. All interest bearing loans (including FIs) to be considered
3. Interest will be allowed only to the extent of 30% of EBITDA
4. Unwinding of interest (IFRS 16, IFRS 9) included
5. Fund raising expenses included under interest (fees, commitment charges)

IMPACT

1. Change in approach from volume of debt to volume of interest for tax allowability
2. No safe harbor rules included (minimum interest allowability)
3. No carry forward of unabsorbed interest
4. Loan from FI's and Loan from Related parties treated equally
5. High Leverage + Poor Free cashflows from operations- Largest Hit

NO CHANGE - WT ON DEEMED INTEREST ON LOAN FROM NON-RESIDENT CONTROLLING PERSON



“CONTROL” – IMPACT AREAS

1 TAX RESIDENCY OF A BODY CORPORATE

2 EXCHANGE LOSS ON LOAN FROM A FOREIGN PARTY

3 THINLY CAPITALISED + INTEREST FREE LOAN FROM FOREIGN PARTY

4 TRANSFER PRICING REGULATIONS

5 CAPITAL GAIN



CONTROL

NO DEFINITION CURRENTLY UNDER INCOME TAX LAW

UPTO APRIL 2020 POSITION

1. Body corporate: 25% or more shares or voting power
2. Partnership: > 50% share in assets or income

PROPOSED POSITION

1. 20% or more voting power
2. Loan from a person =>70% of book value of total assets
3. IP/Trademarks/Patent - Business is 100% dependent
4. Sales concentration=>90%
5. Purchase concentration =>90%
6. Guarantees =>70% of total indebtedness
7. Power to appoint >50% of BOD or One Person to Governing council

IMPACT

1. Substance over form
2. Transfer Pricing documentation scope expanded
3. Foreign companies controlled from Kenya
4. Distributors with exclusive brands from MNCs



PERMANENT ESTABLISHMENT

APPLICABILITY

- Non-resident enterprises operating in Kenya
- Branch office and liaison offices of foreign companies in Kenya
- Dependent Agents in Kenya of foreign companies

TESTS

- Test of Permanence/fixedness
- Test of Business (Profit motive)
- Functional test
- Location test
- Duration test

SERVICE PE & CONSTRUCTION PE

Service PE : > 91 days

Construction PE : > 183 days

IMPACT

Attributable income will be taxed as Business Income in Kenya



What does this mean for Kenya

Common Reporting Standards

> 100 COUNTRIES ARE UNDER CRS REPORTING CURRENTLY



#1: AUTOMATIC EXCHANGE OF INFORMATION

- Banks
- Depositories
- Investment funds



#2: REPORTABLE ACCOUNTS

- Guidelines to be issued
- Reportings by KRA
- Reportings received by KRA



#3: FIRST EXCHANGE

- In 2022

WHAT YOU SHOULD KNOW

RECORD RETENTION - 1 JULY 2021

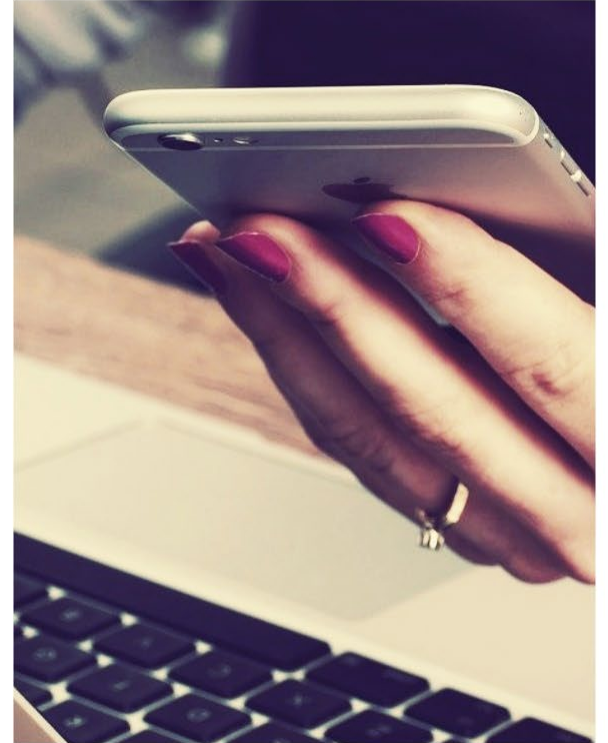
- Companies Act - 7 years
- Tax Procedures Act - Increased from 5 years to 7 Years

CARRY FORWARD OF UNABSORBED TAX LOSSES

- w.e.f 1 July 2021
- Sweetener against Minimum Tax

DOUBLE TAX AVOIDANCE ARRANGEMENTS

- Treaties will supersede
- Information gathered can only be used as per conditions in the treaty



WHAT YOU SHOULD KNOW

EXPORT OF TAXABLE SERVICES - 1 JULY 2021

- VAT - Changed from Zero-rated to Exempt
- Are we Being Export Oriented ?

REVERSE VAT ON IMPORTED SERVICES - 1 JULY 2021

- Unregistered suppliers will also pay Reverse VAT
- Impact to be felt if a company has mixed supplies (Taxable and Exempt)

SOLAR - 1 JULY 2021

- Moved to VAT Exempt (Subject to CS Energy recommendation)
- Investment Allowance can be claimed - Sale of Solar electricity (Private)



SOLAR AND WIND – CHANGING VAT REGIME



2019

VAT EXEMPT



2020

VATABLE



**2021
(PROPOSED)**

VAT EXEMPT



WHAT YOU SHOULD KNOW

VAT EXEMPT

- Vitamin C, Insulin, Food Supplements
- Thermometers, Pacemakers, Protein Concentrates, Medical ventilators, pulse oximeter,

EXCISE DUTY LEVIABLE

- Sugar confectionary locally manufactured
- White chocolate, Chocolate in blocs, bars, slabs locally manufactured

EXCISE DUTY EXEMPT

- Fees and commission in respect of a loan
- Imported glass bottles (excluding glass bottles for packaging of pharmaceutical products)

EXCISE DUTY LEVIABLE

- Imported Motorcycle @ 15%
- Jewellery to attract ED of 10% (specified tariff)

QUESTIONS





THANK YOU :)

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