Grant Thornton

Africa tax desk

Navigating Tax in the continent.

Tax Updates

Regional Tax Publication

March 2023

Dear Reader,

We are pleased to bring you this issue of the Africa tax Desk regional newsletter.

In this issue, we review the key tax measures that have taken place in selected African countries from 2022 to date.

Covered countries

Grant Thornton Botswana

SNG Grant Thornton Eswatini

Grant Thornton Kenya

Grant Thornton Nigeria

SNG Grant Thornton (South Africa)

Grant Thornton Uganda

Click on the country map to go to the section.

Botswana

BOTSWANA | ESWATINI | KENYA | NIGERIA | SOUTH AFRICA | UGANDA

Botswana

Tax Amnesty Program

With effect from 1 July 2021 the Botswana Government introduced a Tax Amnesty Scheme through the Botswana Income Tax (Remission of Penalties and Interest) Amnesty Regulations, 2021/22 and the Value Added Tax (Remission of Penalties and Interest) Amnesty Regulations, 2021/22.

The tax amnesty scheme provides eligible taxpayers with outstanding Income Tax and VAT liabilities, relating to tax years/periods ended on or before 30 June 2021, an opportunity to regularize their tax affairs, in the amnesty period, by filing outstanding tax returns and settling outstanding principal tax liabilities in return for 100% waiver of penalties and interest. Penalties and interest relating to non-compliance with transfer pricing documentation requirements were excluded from the amnesty.

Value Added Tax

On August 2022, the Government instituted measures to address the impact of rising inflation in Botswana. The measures include a reduction in the VAT rate through Statutory Instrument No. 96 of 2022 for a six-month period with effect from 3 August 2022. For the period, the standard VAT rate on supplies of goods and services is reduced from 14% to 12%. The VAT rate on supplies of cooking oil and liquified petroleum gas is reduced from 14% to 0% from 3rd August 2022 and later charge to 12% with effect from 3rd February 2023.
The period of reduction of the VAT standard rate was further extended to 31 March 2023.

Transfer Duty

On 11 August 2022, the Botswana National Assembly passed a Transfer Duty (Amendment) Act No.40 of 2022 which amended Section 20 of the Transfer Duty Act (Chapter 53:01) to provide for the exemption from transfer duty of the acquisition of immovable property, by a holder of a licence under the Special Economic Zone Act (SEZA). The exemption is applicable where the said property is utilized in the carrying on of any approved business activity. The effective date of the amendment is 25 October 2022. Transfer duty is levied at the rate of 5% for transfer to a citizen (including a company owned in the majority by citizens) and at the rate of 30% where the transfer is to a non-citizen. This, in addition to other incentives such as the special corporate tax rates of 5% for the first 10 years of operation and 10% thereafter, enhances the attractiveness of the Special Economic Zones.

Eswatini

Eswatini

Tax compliance certificates

In December 2022, the Eswatini government issued a Gazette detailing various issues pertaining to tax compliance certificates regulations. The Gazette effectively revokes the Income Tax (Clearance Certificate) Regulations of 1988.

Transactions requiring income tax compliance certificates and the persons from whom income tax compliance certificates shall be required are set out in the table below.

An application for income tax compliance certificate shall be made to the Commissioner General in respect of each transaction prescribed in Regulations. A person requiring an income tax certificate shall apply for the certificate either in person or through their
Each tax compliance certificate is valid for a maximum period of 12 months with the exception of the performance of any theatrical, musical, sporting or any other entertainment in Eswatini by a non-resident entertainment or sportsperson. In such cases,
- An application for a tax compliance certificate shall be in respect of each separate performance
- The validity of each tax certificate shall be for the duration of the performance and
- The certificate for a particular performance shall cease to be valid after the performance has been made.

Transactions requiring income tax compliance certificates and persons from whom income tax compliance certificates are required are outlined below:

Type of transaction	Person from whom Tax Compliance Certificates are required
The renewal or transfer of any licence (other than renewal of motor vehicles licence), permit or similar documents relating to any trade, business, profession or vocation, for business or trade.	The person seeking renewal or transfer of any licence, permit or similar document relating to any trade, business, profession or vocation for business or trade
The transfer of immovable property or ant endorsement to any title deed having the effect of transferring immovable property	The transferor or transferee or any person in whose name the endorsement is to be made
The registration or deregistration of a company	In the case of registration the person whose names are to be registered as directors or subscribers in the case of deregistration by the company to be deregistered
The first registration of a motor vehicle in Eswatini	The person in whose name the motor vehicle is to be registered
The registration of a second had motor vehicle purchased from a motor vehicle dealer or individual	The person in whose name the motor vehicle is to be registered
The tendering for the provision of goods or services to the Government, a government institution, local authority or a parastatal body, a company or any other entity in excess of E20,000.00	The person tendering for the provision of goods or services to Government or a parastatal body, a company or other entity
The purchase, sale or transfer of shares in companies.	The purchaser, seller or transferor of the shares. The person seeking the renewal of the temporary residence permit

Kenya

Kenya

Introduction

The Finance Act, 2022 (the Act) was signed into law by the President of Kenya on 21st June 2022, published on 23rd June 2022 and gazetted on 8th July 2022.

Income Tax Act

Definitions under section 2 of the Income Tax Act

Section 2 of the Income Tax Act provides clear definitions for various terms as used in the Act. The definitions introduced by the Act seeks to pre-empt any future tax disputes which could have arisen as a result of misinterpretation.

These definitions include:

a. **Fair market value** – The comparable market price available in an open and unrestricted market between independent parties acting at arm's length and under no compulsion to transact, which is expressed in terms of money or money's worth.
b. **Financial derivate**- A financial instrument whose value is linked to the value of another instrument in a transaction to be settled at a future date
c. **Permanent home** - A place where an individual resides or is available to that person for residential purposes in Kenya or where the individual's personal or economic interests are closet.

Taxation of gains from financial derivatives accruing to non-residents.

The Act has amended Sections 3, 9, 34, 35 as well as the Third schedule. The enacted provision brings to tax gains accruing to non-resident persons from transactions involving financial derivatives in Kenya, financial derivatives traded on the Nairobi Securities' Exchange will however be exempted.

The gains will be subjected to withholding tax at 15%, subject to Regulations to be issued by the CS National Treasury.

The enacted provision will widen the tax base by bringing to tax gains accrued by non-resident persons from financial derivatives, while still maintaining the competitiveness of the financial derivatives traded on the Nairobi Securities' Exchange.

Additionally, the charge to tax gains derived by non-resident persons from financial derivatives could be one way of promoting equity because such gains are taxed on resident persons. We anticipate that the regulations will provide more clarity on this grey area.

Digital Service Tax

The Act has introduced an amendment to the Income Tax Act to the effect that a non-resident person with a permanent establishment in Kenya shall be exempt from DST. Effective 1st July 2022, non-resident persons with a PE in Kenya shall no longer be required to account for DST on services rendered through a digital market place. This is a relief to non-residents with a PE in Kenya who are already subjected to corporation tax on the income derived from digital platforms. This amendment will prevent double taxation of the income derived from digital platforms by a Kenyan PE and create a level playing ground with resident services providers who are not subjected to DST. The amendment was effective from 1st January 2023.

Ascertainment of gains and profits of business in a preferential tax regime

Kenya implemented the BEPS Action 5 minimum standard on Harmful Tax Practises by expanding the scope of transactions considered for transfer pricing where one party to the transaction is within a preferential tax regime through the Finance Act, 2022.

The Act has amended section 18 (A) of the Income Tax Act (ITA) to include within the ambit of transfer pricing (TP) transactions between resident persons and the following persons located in a preferential tax regime;

- An associated enterprise of a non-resident person;
- A non-resident person;
- A related resident person; and
- A PE of a non-resident person

The Act defines a preferential tax regime as:
"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
A foreign jurisdiction which:

- Does not tax income;
- Taxes income at a rate that is less than 20%;
- Does not have a framework for exchange of information;
- Does not allow access to banking information; or
- Lacks transparency on corporate structure, ownership of legal entities locates therein, beneficial owners of income or capital, financial disclosure or regulatory supervision.

Moving forward, it will be important to conduct sufficient Know Your Customer (KYC) procedures on customers or trading partners to avert adverse tax implications that could arise from resident taxpayers transacting with resident or non-resident persons in a preferential tax regime. It would be prudent to expect increased scrutiny from the KRA on such transactions between related and independent entities.

Gains made by a resident person who carries on business with a non-resident individual located in a preferential tax regime shall be deemed to be those amounts which could have been expected had the transaction been conducted by independent persons dealing at arm's length. Special Economic Zones and Export Processing Zones are examples of such regimes. The Commissioner has been granted powers to revise/ensure such transactions meet the arm's length principal. Effective date 1st July 2022.

Introduction of the Country by Country Reporting Standards

The Act introduced a new country by country reporting requirements for MNE with a gross turnover of KES 95 Billion effective from 1st January 2023.
A Country by Country (CbC) report is a three tier annual transfer pricing filing requirement, as a minimum standard reporting recommendation of the BEPS Action 13. The CbC reporting standard has been seen to increase information sharing on group operations worldwide and encourage transparency between tax authorities in different jurisdictions.

This reporting standard requires ultimate parent entities to disclose financial information relating to their operations in each jurisdiction where the group has a taxable presence.

CbCR applies to ultimate parent entities resident in Kenya and part of a multinational enterprises (MNE's) with a gross turnover of KES 95 Billion, including extraordinary or investment income. The CbC reporting requirement includes an additional compliance requirement to file a master and local file containing standardized information relevant for all multinational enterprise group members and the material transactions of the local taxpayer, respectively.

MNE's which meet the threshold for CbC reporting will be required to file a CbCR notification to the Commissioner within the financial year. A CbC report should be filed in Kenya within 12 months of MNE's financial year end, where the ultimate parent entity is resident in Kenya. The requirement to comply with CbC reporting will apply from 2022 and subsequent years of income.

Exempt Incomes

The following income will be exempted from income tax under the First Schedule to the ITA effective date from 1st July 2022:

a) Deemed interest in respect of an interest free loan advanced to a company manufacturing human vaccine;
b) 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.
c) Compensating tax accruing to a company manufacturing human vaccine;
d) Dividends paid by a company manufacturing human vaccine to any non-resident person;
e) Income of a company manufacturing human vaccines
f) Dividends paid by Special Economic Zone enterprises, developers and operators to any non-resident person licensed under the Special Economic Zones Act;
g) Dividends to any non-resident person by Special Economic Zone enterprises, developers and Operators

The above exemptions are primarily geared towards providing an inviting incentive to investors seeking to invest in the health sector and special economic zones in line with the Governments Big4 Agenda.

150% Capital Allowances

The Act now provides for capital allowance of 150% where the cumulative investment value for the preceding four years from the date that this provision comes into force or the cumulative investment for the succeeding three years outside Nairobi City County or Mombasa County is at least two billion shillings.

This will promote investment outside Nairobi City County and Mombasa County in a bit to promote even industrialization across the country and reduce congestion as well constrain of resources in these two counties.

Investment Deduction on bulk storage and handling facilities supporting SGR operations

Investments made before 31 December 2023 on the construction of bulk storage (100,000 metric tonnes and above) and handling facilities to support the Standard Gauge Railway operations will qualify for Investment Deduction of 150%.
In our view, this provision allows more time for persons on the completion phase of such projects to enjoy huge capital allowance on the heavy investment made towards the construction of such facilities once they Commission them.

Income from shipping businesses

The Act now provides for lower rate of tax for the income earned by a company operating a shipping business in Kenya. The applicable rate of tax will be 15% per cent for the first 10 years from the year of commencement of its operations and the same will revert to the resident corporate tax rate of 30% thereafter.
This provision is likely to encourage investment in the shipping industry, which will in turn stimulate global commerce and spur foreign direct investment.

Interest paid in respect of bearer bonds issued outside Kenya

The applicable withholding tax for interest and deemed interest arising from a bearer bond issued to non-residents outside Kenya of at least 2 years duration, and interest, discount or original issue discount, shall be subject to a reduced withholding tax rate of 7.5% of the gross sum payable.

This move will ease the Kenyan government's efforts to raise funds for infrastructural projects, given that the reduced withholding tax rate will make such bonds attractive and lucrative in the international market. Effective date from 1st January 2023

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This move will ease the Kenyan government's efforts to raise funds for infrastructural projects, given that the reduced withholding tax rate will make such bonds attractive and lucrative in the international market.

Lower rate of tax for companies operating a carbon market

The Act now applies taxing rights to income earned by a company operating a carbon market exchange or emission trading system that is certified by the Nairobi International Financial Centre Authority.

The applicable rate of tax will be 15% per cent for the first 10 years from the year of commencement of its operations, and its expected to revert to the applicable resident corporate tax rate of 30% thereafter.

The enactment of this provision is effective from 1 January 2023 and provides for the reduced rate of tax is aimed at encouraging the growth and participation in the carbon market exchange and subsequently reduce global warming.

VAT Changes

Exportation of taxable services

The Act seeks to reclassify the exportation of services from exempt status to standard rate at 16%. However, exportation of taxable services in respect of business process outsourcing is now zero-rated.

This amendment is bound to cause confusion as the VAT Act does not define what constitutes "Business Process Outsourcing" services. The term business process outsourcing is only defined under the Special Economic Zones Act (SEZ Act) where it is defined as the provision of outsourcing services to business for specific business functions or processes such as back office support services in human resources, finance, accounting and procurement among other services. This definition is ambiguous and in recent decisions the court has been reluctant to import definitions from other legislation.
The issue of exported services has been contentious in the past few years. Given the current changes, the disputes are only going to increase.

Value Added Tax on Digital Supplies

The Act has introduced a series of amendments effective from 1 July 2022 in relation to VAT on digital supplies as follows

Definition of digital market place
"Amend the definition of a digital market place by deleting the expression "sell or provide services, goods or other property" and substituting it with the words **"sell goods or provide services".**

The amendment seeks to provide clarity on the scope of the tax on digital supplies as it removes the ambiguity created by the broad use of the term 'other property'.

VAT on imported digital service
Exclude an import of services made over the internet or an electronic network or through a digital marketplace from Reverse VAT under Section 10 of the VAT Act.

The exemption from reverse VAT means that all non-resident persons shall be required to register and account for VAT irrespective of the recipient of the goods or services is.

Registration threshold for digital supplies
The amended VAT Act excludes persons supplying imported digital services over the internet or an electronic network or through a digital marketplace from meeting the KES 5 million VAT registration threshold.

The exemption from the registration threshold means that all persons providing digital supplies over a digital market place shall be required to register and account for VAT on the digital supplies regardless of the value of the supplies made to persons located in Kenya.

Reduced VAT on Liquified Petroleum Gas Enacted amendment:

The Act seeks to reduce VAT on Liquefied Petroleum Gas (LPG) including propane from 16% to 8%. The Finance Act, 2020 had introduced VAT on LPG, however, the implementation was suspended for a year and the change took effect as from 1s' July 2021.
The introduction of VAT on LPG which is an alternative source of energy increased the price of this commodity hence reducing its accessibility to the common mwananchi.

The change will help reduce the cost of cooking gas which is a cleaner and more environmental friendly energy source.

Sealing loophole on claiming of input VAT

The Act has amended Section 17 of the VAT Act that provides for deduction of input VAT to the extent that the input VAT was acquired to make taxable supplies.
The Act has also provided that input VAT is only claimable by a registered person if the input VAT was declared in a return for the period. Further the Act has sought to provide clarity on the documentation required to claim input VAT by the Oil Marketing Companies (OMCs) participating in the Open Tender System for the importation of petroleum products that have been cleared through a non-bonded facility, The documents will include; the custom entry showing the name and PIN of the winner of the tender and the name of the other oil marketing companies participating in the tender.

NB: Any input tax that may have been incurred by an oil marketing company participating in the Open Tender System before the coming into force of this provision shall be claimed within twelve months after this provision comes into force.
This amendment clarifies that input VAT is only claimable if it has been declared in the VAT return.

Further, the amendment on documentation required by the OMCs to claim input VAT is intended to ensure that there is accountability in the Open Tender System. This amendment has been enacted to take care of private cargo imports under the Open Tender System where the import cargo for different oil marketers is declared under the PIN of the winner of the tender.

Aligning the VAT Act and TPA provisions on imported goods

The Act has amended Section 22 of the VAT Act by adding the following provisions under subsection (4):

- The Tax Procedures Act, 2015 shall apply with regard to imposition of interest and penalties; and
- in cases where interest becomes payable it shall not, in aggregate, exceed the principal tax.

This amendment brings clarity on the applicable penalties and interest on VAT on imported goods which are subject to customs control as there has been confusion on whether the penalties stipulated in EACCMA were applicable or the provisions under the TPA.

The Act has deleted Section 30 of the VAT Act which provided for refund of tax paid in error. This is a clean-up to align the VAT Act with the TPA with respect to refunds for overpaid taxes/taxes paid in error.

More tokens and grants for manufacturers

The Act has amended Section 17 (5) by providing that registered manufacturers may apply for a refund of excess input VAT incurred in the provision of taxable supplies to an official aid funded projects.

Official aid funded projects are specified to have an exempt VAT status as provided for under Paragraph 51 of Section A of Part 1 of the First Schedule to the VAT Act. The Government through the Tax Amendments Act of 2020 allowed manufacturers who deal with these projects to claim input VAT despite the exemption status.

The amendment to further allow the manufacturers to seek a refund of the excess input VAT is a welcome move as it will ensure that the local manufacturers are not put at a competitive disadvantage when competing against foreign imports.

VAT on exported services

The Finance Act has amended the VAT Act by deleting the provision on exemption of export of service and introducing a provision on the exportation of services in respect of business process outsourcing as a zero-rated supply. This means that any service, which does not fall within the definition of business process outsourcing, shall be subject to VAT at the standard rate of 16%.

Exemption from VAT on local passenger vehicles.

The Act seeks to exempt from VAT inputs and raw materials used in the manufacture of passenger vehicles and locally manufactured passenger motor vehicles.
Based on this provision, locally manufactured means a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose total value comprises at least 30% of parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

The change is intended to encourage investment in the automotive sector. This is likely to spur manufacturing of passenger motor vehicles.
Thus, it will make locally manufactured motor vehicles affordable, consequently reducing the dependence of second-hand motor vehicles. In addition, this will increase employment opportunities and impact the environment positively.

Overpaid VAT Error

The provision of the VAT Act relating to VAT paid in error was deleted and its administration was moved to the Tax Procedures Act with effect from 1 July 2022. Currently, a taxpayer may apply for a refund of VAT paid in error within 12 months of making the error. This effectively reduces the period for application for VAT refunds for amounts paid in error to six months.

The reduced period within which a person can apply for VAT paid in error means that taxpayers need to be more vigilant to identify instances where VAT is paid in error and lodge applications for refund in good time. At the same time, this proposal may require taxpayers to institute better controls within their system to reduce instances of VAT paid in error.

Excise Duty

Annual inflation adjustment

The Act has amended the annual inflation adjustment provision to empower the Commissioner General, by notice in the Gazette and with the approval of the CS, to exempt specified products from inflation adjustment after considering the circumstances prevailing in the economy in that year.

This is to protect consumers from increase in prices due to annual inflation adjustments on excise duty of specified products. However, the Act does not provide the parameters that the Commissioner General will use in determining the products to be excluded from the inflation adjustment review.

In-duplum rule for excise duty on imported goods

The Act has aligned the imposition of interest with the provisions of the TPA. It has capped the interest payable with respect to unpaid taxes to the principal amount. Currently, there are instances where the interest on unpaid excise duty exceeds the principal amount. This is a welcome relief to registered manufacturers and importers of excisable goods and also aligns with best international practice where the interest on unpaid taxes should not exceed the principal amount due.

Increase and introduction of excise duty on certain products

The increase of excise duty is part of the tax base expansion though the increase may negatively impact the consumption of these product largely because of the expected increase in their costs. Increases are noted in the rate of fruit juices, cosmetics and beauty products, alcohol, cigarettes and nicotine products sugar confectionary, white chocolate and jewellery.

The increase is also aimed at curtailing consumption of goods that are considered harmful to health. However, most of these items have inelastic demand and as such the increase in price of the products in question may therefore not achieve the intended objectives.

Tax Procedures Act

Requirement for trusts to notify the Commissioner about changes

The Act provides that trusts, whether in business or not, should notify the Commissioner about any changes in identity, address of the trustees or beneficiaries of the trust.

Previously, trusts were still required to report change in particulars to the Commissioner but the TPA had not specified if this was applicable to those not carrying on business.

Inference: This will likely result to more scrutiny by KRA in trusts, particularly dormant ones and those used purely for investment or charitable purposes. KRA will be interested in knowing whether there is any tax collectible on change in trusts even if the trust is not in business.

Amendment of VAT assessments

The Act provides that in instances where the Commissioner amends an assessment relating to VAT, the input tax shall be allowable for a deduction within six (6) months after the date of supply.

Inference: This addresses a gap in the TPA on amended assessments and aligns with the VAT Act provisions in relation to claiming of input tax. The effective date for the amendment is 1st July 2022

Security on property for unpaid tax

Scope of property that the Commissioner can use as security for unpaid tax has been widened. The definition of property consists of land, buildings, aircraft, ship, motor vehicle or any other property that the Commissioner may deem sufficient as security.

Previously, only land and buildings qualified as security. Commissioner now has powers to dispose off the property used as security if the taxpayer does not settle the tax liabilities within 2 months of being notified by the relevant government Registrar.

However, where a payment plan has been agreed between the taxpayer and the Commissioner on how to settle the tax, the liability should be settled within the agreed payment plan before the notification by the Commissioner is lifted.
Inference: This will enhance recovery of tax arrears by KRA due to the wider portfolio of assets that can be used as security/collateral.

The introduction of the settlement plan is likely to be a relief for the taxpayer as the Commissioner is barred from disposing off the property where a payment plan has been agreed and adhered to.

Refund of overpaid tax

Taxpayers can now apply for overpaid tax, including overpaid instalment tax to be offset against future tax liabilities. Any outstanding tax after the offsetting will accrue interest and penalties. This applies to situations where the taxpayer has overpaid instalment tax.

The Commissioner has ninety (90) days to determine the application for refund and ascertain whether or not there was overpayment of tax, failure to which the application is deemed approved.

Taxpayers may appeal to the TAT within 30 days of the Commissioner's decision to either refund overpaid tax or apply it against future liabilities.

Inference: The additional options will help KRA address cashflow issues around refunds due to tax overpayments.

Taxpayers have an option of having the overpaid tax (including overpaid instalment tax) applied against future liabilities instead of waiting for two years for a refund. The inclusion of a 90-day limit for the Commissioner to review and determine the application will provide the much needed certainty to taxpayers. Additionally, this will alleviate taxpayers cash flow constraints and ease the cost doing business in Kenya.

Refund of tax paid in error

The Commissioner can refund any tax paid in error if satisfied that the amounts should not have been paid. The procedure for refund for tax paid in error will be similar to that for overpayments. Refunds additionally apply where tax paid in error is on zero-rated or exempt supplies due to circumstances beyond taxpayer's control.

This is a welcome provision for taxpayers as they can apply for tax paid in error and utilise the same to alleviate their financial business obligations.

Notification of invalid notice of objection

The Commissioner should notify the taxpayer within 14 days if notice of objection is not validly lodged. Previously, the Commissioner was required to notify the taxpayer immediately. The application for extension of time to lodge notice of objection should be decided by the Commissioner within 14 days.

The Commissioner will be expected to issue an objection decision within 60 days from the day of receiving a valid objection by a taxpayer. If the Commissioner does not issue the objection decision within 60 days, the taxpayer's objection is deemed allowed.

PIN requirement for registration of a trust

The First Schedule to the TPA has been amended to include registration of a trust as a transaction that requires a PIN. The revenue authority will pay greater attention to trusts. This may due to the fact that trusts are increasingly being used as a means to transfer and hold assets by wealthy individuals and corporations to avoid tax.

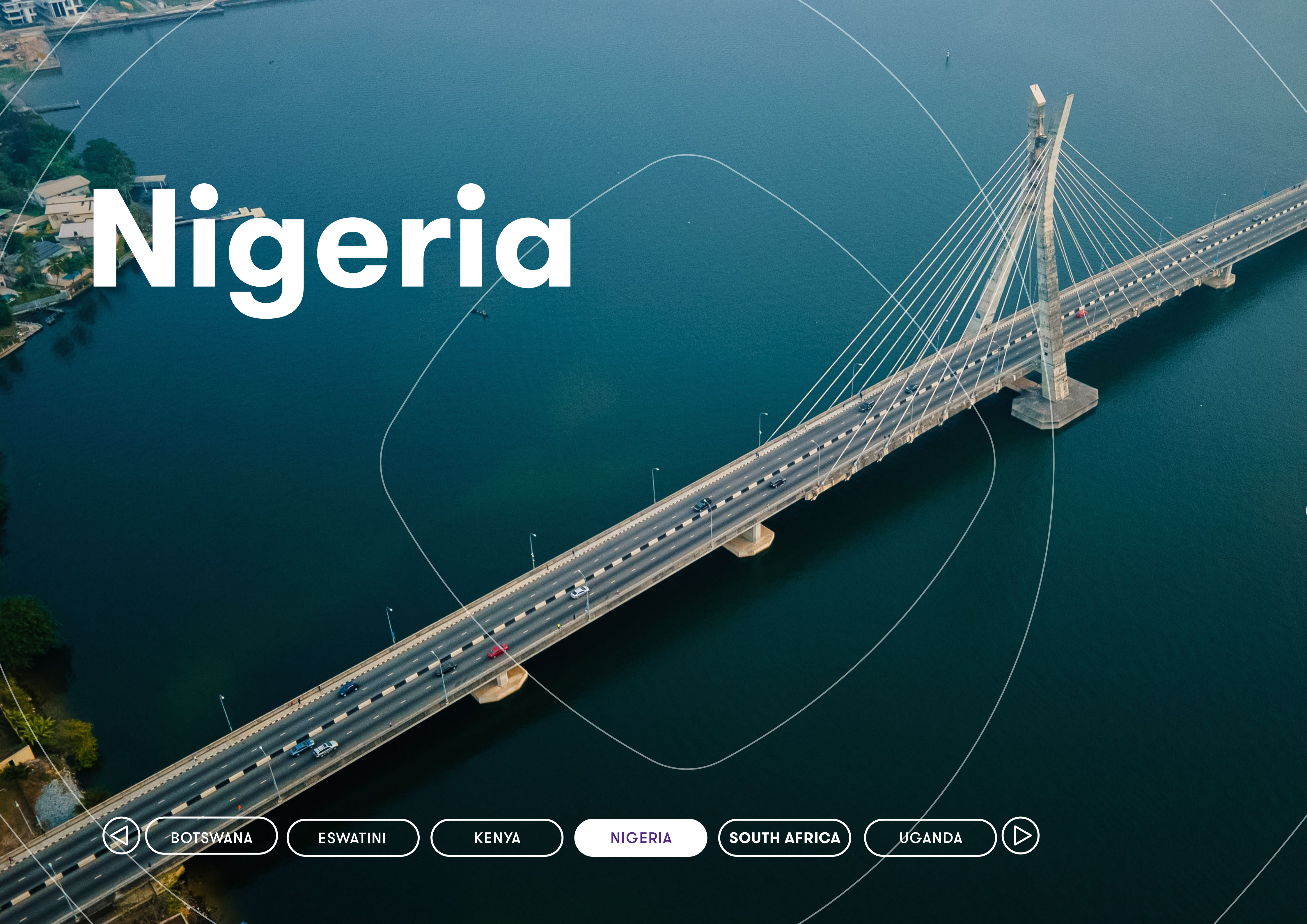
Capital Markets Act - Licensing requirements

The Capital Markets Act has been amended to allow for legal entities prescribed under CMA regulations to apply for licenses issued by CMA. Previously, only companies incorporated under the Companies Act were allowed to apply.

The Act has also been amended to expand the number of people who could be vetted for licensing. Previously, only a director or chief executive could be vetted. However, the CMA can now vet any person who directs or manages the business of the prospective licensee.

Inference: This will open licencing by the CMA to other business structure such as partnerships. The requirements for vetting will increase the number of people who are expected to be vetted potentially increasing the bureaucratic bottleneck.

Nigeria



Nigeria

FIRS to collect Nigerian Police Trust Fund Levy
The Nigerian Police Trust Fund (Establishment) Act (NPTF Act), which was signed into law in June 2019, creates a fund, the proceeds of which will be utilized to train police officers and purchase security machinery and equipment. The Act imposes a 0.005% fee on the "net profit" of companies doing business in Nigeria. While the procedures for assessing and implementing the levy were previously unclear, the FA 2021 has now confirmed that the levy will be administered by the FIRS and that applicable provisions of the CITA and the FIRSEA will apply to the administration, assessment, collection, and enforcement. As a result, organizations doing business in Nigeria will be compelled to comply and pay the charge.

Educational Institutions liable to pay Companies' Income Tax
FA 2021 repeals the long-standing income tax exemption enjoyed by educational organizations. As a result, the profits of such companies are now taxed regardless of whether their operations are of a public nature. The applicable tax rate will be determined by whether an educational corporation is categorized as a medium or large corporation, subject to CIT at 20% or 30%, respectively. Educational institutions classed as small businesses will continue to be tax exempt. Furthermore, educational institutions organized as charitable may continue to enjoy tax exemption under other sections of the statute.

Excise duty on non-alcoholic beverages, carbonated and sweetened beverages.
One of the notable developments in the tax space was the introduction of excise duties at N10 per litre on non-alcoholic, carbonated and sweetened beverages.

Gas Utilization Incentives
The gas utilization incentive provides for a three-year initial tax-free term that can be extended for a further two years if the business performs well. Businesses can only take advantage of this incentive once. In addition, any new firm formed by reorganization, restructuring, repurchase, or other similar schemes from a company that has already benefited from this incentive would not be eligible for it. Furthermore, any corporation that has previously claimed an incentive for trade or commerce of gas consumption under any Nigerian law, including the Petroleum Profits Tax Act (PPTA) or the IDITRA (Industrial Development Income Tax Relief Act) would not be eligible for this incentive.

SMEs in Agricultural Sector can apply for Pioneer Status
Small or medium-sized companies engaged in primary agricultural production are eligible for an initial tax-free period of four years, which may be extended for an additional two-year period, subject to satisfactory performance.

Increase in Tertiary Education Tax (TET) rate
TET rate has been increased from 2% to 2.5% of the assessable profit of companies doing business in Nigeria. This is effective from 2022 assessment year on 2021 accounting year.

Capital allowance for small companies
Capital allowances including unabsorbed allowances, available to small companies would be deemed to have been utilized in each year of assessment that they enjoyed the tax exemption.

Rules for Proceedings At The Federal High Court on Tax Matters "(Tax Appeal) Rules 2022"
The Federal High Court Chief Judge issued the Federal High Court (Tax Appeal) Rules 2022 ('the Rules') in line with the authorities bestowed on him by sections 34(1) and (2) of the Federal High Court Act, and paragraph 17 (5) of the Fifth Schedule to the FIRS (Establishment) Act, 2007. The Rules supersede the Federal High Court (Tax Appeal) Rules, 1992 (the "1992 Rules") and make significant improvements to the tax appeal process. The Rules' major goal is to speed up the appeal procedure from the Tax Appeal Tribunal (the Tribunal) to the Federal High Court (FHC). The Rules became effective on 10 January 2022. Major changes introduced by the Rules include the following:

a. Acceleration of the Appeal Procedure: The Rules established new and shorte timetables for several phases of the appeal process.
b. Deposit of Judgment Sum: Order V Rule 1 requires a tax debtor who wishes to appeal the Tribunal's decision to deposit the Judgment Sum stated in the decision under appeal in an interest-bearing account maintained by the FHC's Chief Registrar. This is comparable to the provisions of the Federal High Court (FIRS) Practice Directions 2021 and the Tax Appeal Tribunal (Procedure) Rules 2021, which demand a security deposit of 50% of the assessed amount.
c. Appeals on Matters of Law: Appeals to the Court must be limited to points of law.

The Restriction of Capital Allowance Claim

The FA 2021 limits capital allowance claims to the portion of qualified assets used to generate taxable profits. Capital allowance on assets used only to create tax-exempt profits will no longer be claimable, while capital allowance on assets used to generate taxable profits will be prorated. The restriction will only apply if the share of non-taxable income surpasses 20% of the total income of the company. This restriction does not apply to enterprises who benefit from the pioneer incentive scheme established under the Industrial Development (Income Tax Relief) Act (IDITRA).

WHT on interest payable to unit trusts

Withholding Tax (WHT) deducted from interest paid to a unit trust now constitutes the final tax payable on such income. Prior to FA 2021, the interest earned by unit trusts was subject to tax at 30%.

Nigeria's Fiscal Policy Measures (FPM) 2022

The Federal Government of Nigeria [FGN] created a set of instruments called Fiscal Policy Measures (FPM) to promote economic growth by increasing investment in the public and private sectors and redistributing resources from desirable investments to more desirable ones. The FPM 2022 introduces Import Adjusted Tax (IAT) on 172 tariff lines, prohibits certain goods coming from non-Economic Community of West African States (ECOWAS) member states, and specifies excise duty rates on non-alcoholic beverages and telecommunication services.

Capital Gains Tax on disposal of Shares

Gains derived from the sale of shares in any Nigerian firm will be subject to Capital Gains Tax (CGT) at a rate of 10%. CGT will be levied on the entire or a portion of the proceeds that are not reinvested in the purchase of shares in the same year of assessment. The sale of less than N100 millions of shares in any 12 consecutive months, the transfer of shares between an approved borrower and lender in a Regulated Security Lending Transaction, and gains on the sale of Nigerian government securities are all excluded from CGT.

Withholding tax on Interest payment as a final tax

Interest payments paid to non-resident and unit trust firms after withholding tax has been deducted are not subject to further taxation in the recipient's hands: it is a final tax.

FIRS and the MOU with NEPZA

The Federal Inland Revenue Service (FIRS) and the Nigeria Export Processing Zones Authority (NEPZA) signed a Memorandum of Understanding (MoU) on May 8, 2022, to increase understanding of the tax-exempt index for the Free Trade Zones Scheme. The conflict between the parties made this understanding vital. The discordant behaviors includes arbitrary bank account freezing and unlawful access into the zones to harass free trade zone participants. The objective of the MoU is always to ensure harmony, remove any misunderstandings, and allow both agencies to support one another.

Value Added Tax (VAT) registration for Non-Resident Companies (NRCs)

Prior to the Finance Act 2021, the VAT Act gave NRCs the leverage to skip the registration process by appointing a Nigerian representative for compliance. However, by the amendment via FA 2021, registration is compulsory even with the presence of a representative. Non-Resident Company (NRCs) are now required to account for the Value Added Tax (VAT) on their transaction with customers in Nigeria whether by themselves or through an agent.

A resident receiver of such services can also self-charge the VAT and remit to the Nigeria tax authority.

Amendments to Public Sector Legislations – Fiscal Responsibility Act, Public Procurement Act, Finance (Control and Management) Act

The citizenry has become more vocal about the need for greater accountability in taxation and public revenue management. The Finance Act of 2020 (FA 2020) amended the Fiscal Responsibility Act (FRA) and the Public Procurement Act (PPA) to increase transparency in government spending. FA 2021 changes the FRA and the Finance (Control and Management) Act (FCMA) in the same way to improve openness and accountability in public sector financial management.

FIRS to collect NASENI Levy (Administration of the National Agency for Science and Engineering Infrastructure Act)

The National Agency for Science and Engineering Infrastructure (NASENI) Act has been amended to impose a levy of 0.25% of profits before tax of large companies in sectors including banking, telecommunications, ICT, aviation, maritime, and oil and gas earning a turnover of N100 million and above. The FIRS (Federal Inland Revenue Service) is the agency responsible for the collection of the levy. FIRS released a circular for its administration.
Notables from the Circular include-

- The levy is applicable to both resident and non-resident companies.
- The NASENI levy returns are to be filed together with Companies Income Tax (CIT) returns in accordance with the CIT Act.
- Effective date of implementation is 1st January 2022.

Non-Resident Company to pay 6% Digital Services Tax (DST): Powers of the FIRS

Nigeria's position on Pillar II solution can be traced to the introduction of 6% tax on turnover of Non-Resident Company (NRC). It is popularly known as Digital Service Tax (DST) which is a form of direct tax on all forms of electronic and digital activities performed by a foreign company in Nigeria.

Finance Act 2019 introduced a concept called Significant Economic Presence (SEP) which was later gazette as "SEP Order" and signed by the Minister of Finance, Budget & National Planning. The order is to address taxation of digital services provided by Non-Resident Company (NRC) in Nigeria.

These activities include electronic commerce, application store, high-frequency, electronic data storage, online adverts, participative network platform, online payments and so on

The amendment of Section 30 of the Companies Income Tax Act (CITA) in the Finance Act 2021, also stated that NRCs providing digital services with SEP may be assessed to tax on a "fair and reasonable percentage of the part of the turnover attributable to their presence in Nigeria".

During the presentation of the 2022 budget, the Minister of Finance, Budget and National Planning announced that NRCs will be charged to tax at 6% of turnover. This represents a substitute of the OECD's Pillar II of 15% that the threshold will limit the number of MNEs that will be subject to tax in Nigeria. The 6% guarantees that all MNEs with SEP of N25million turnover and above pays their fair share of tax in Nigeria.

The Nigerian Start-Up Act

On the 19th of October 2022, the Nigerian Start Up Act was signed into law. The Act is a regulatory framework for the Startup Ecosystem in Nigeria. The Act is expected to create a thriving environment for founders and investors alike. The Act's provisions can be divided into 4. They include:

- Startup Labelling
- Establishment of Fund for Startups
- Incentives for Labelled Startups
- Regulatory Collaboration

In addition, the Act provides for tax breaks which would ease the tax burdens of the Startups.

Export Profits for All Streams of Petroleum Operations

Before Finance Act [FA] 2021, CITA typically exempted profits made by Nigerian businesses on items exported from Nigeria, provided that the export earnings were reinvested to buy raw materials, equipment, and replacement parts. Companies engaged in upstream operations that were formerly subject to the Petroleum Profit Tax are now taxable under CITA as a result of the passage of the Petroleum Industry Act 2021 (PIA 2021).

By excluding businesses involved in upstream, midstream, and downstream petroleum activities from the export earnings exemption, the FA 2021 nullifies the previous exemption on the export of oil and gas.

FIRS reviewed Withholding Tax on Interests, Dividends, Royalties and other Services

Nigeria has, since 1999, been unilaterally applying Withholding Rate (WHT) rate of 7.5% on dividends, interest and royalties paid by residents of Nigeria to residents of Nigeria's tax treaty countries, this rate was sequel to the policy statement of government as contained in the Budget Statement of 1999.

The Minister of Finance, Budget and National Planning has approved the discontinuation of unilateral application of a uniform WHT rate of 7.5% on dividends, interest and royalties paid to residents of treaty countries with effective date from 1 July 2022. The 7.5% WHT rate is lower than the WHT rates in the relevant tax laws of Nigeria which is 10%.

Nigeria currently has operational DTAs with sixteen (16) countries around the world, the unilateral application is suspended for the following countries; Italy, The United Kingdom, Belgium, Pakistan, Czech Republic, Slovak Republic, France, Netherlands, Romania, Canada and Philippines which means Dividend, Interest and Royalty payable to the residents of those countries will be paid net of WHT rate of 10%. However, WHT rate on Dividend, Interest and Royalty payable to individual residents of all treaty countries is 5%. China and Singapore will continue to enjoy 7.5% as WHT rate on Dividend, Interest and Royalty while South Africa, Sweden & Spain will enjoy 7.5% only on Interest, Royalty and Dividend where the company has a voting power of 10% and above. This means that companies in South Africa, Sweden & Spain with a voting power lower than 10% will suffer 10% WHT rate on dividend earned.

FIRS upscaled the automation of their processes- Tax Promax & others

In 2020, FIRS introduced an online platform, it is connoted as Tax Pro-Max, for electronic filing of all naira and other foreign major currencies denominated transactions. Also, the Service introduced Electronic-Transfer Pricing (TP) platform for filing of TP returns and Country-by-Country-Reporting (CBCR). In addition, NRCs can now directly remit their taxes to FIRS and file returns via email.

FA 2021 empowers FIRS to deploy third-party technology to automate its tax administration process on a taxpayer after given at least 30 day-notice to the taxpayer. Failure to comply attracts a penalty of N25,000 per day of default. The tax administration procedure includes registration, notification, assessments, collection, reviews, audit, litigation etc, all can now be automated by the FIRS using third-party technology (as opposed to just using proprietary technology in the past). This technology, Tax Promax, has been enabled for filing of all taxes from anywhere in the world. Taxpayers, however, would require DIN [Documentation Identification Number] to pay tax.

Confidentiality of Taxpayer's Information

The amendment aims to increase the obligation for FIRS's personnel who have access to taxpayer information to treat that information as secret and confidential and to adhere to data protection laws. Failure to do so carries a fine, incarceration, or both penalties.

Transfer Pricing and CbCR

MNEs are expected to comply with the Transfer Pricing Regulations which have severe penalties for non-compliance. The compliance covers TP Documentation, TP Returns, CbCR Notifications.

South Africa

South Africa

2023 BUDGET ANALYSIS AND COMMENTARY

On 22 February 2023, Minister of Finance Enoch Godongwana delivered his 2023 Budget speech amid stage 6 of load shedding, rising cost of living and high level of youth joblessness. We provide herewith the analysis and the commentary of the some of the major budgetary items:

2022 Projected tax revenue versus projected actual

In the 2022 Budget, the main budget revenue for 2022/23 was projected to be R1.6 trillion. South African Revenue Service (SARS) is now expected to collect tax revenue amounting to R1,69 trillion for 2022/23, an amount which is R93.7 billion higher than the budgeted revenue. The positive variance of R93.7 was as a result of better than expected collections mainly from the mining sector due to the sector experiencing favourable high commodity prices. A continued recovery from the pandemic among companies in manufacturing and financial sectors also contributed to this strong revenue performance. An increased tax revenue without corresponding tax increases serves as an indication that the enforcement tools (tax audits and imposition of penalties) deployed by SARS are starting to bear fruits.

2023 projected revenue

The main tax revenue for the 2023/24 fiscal year is projected to be R1.8 trillion or 25.1 per cent as a share of Gross Domestic Product (GDP) in 2023/24. The attainment of this tax revenue target is based on the projection that South Africa will achieve the real economic growth of 0.9% for 2023. The ability of the Treasury to correctly project the performance of the economy has direct bearing on whether the tax revenue will be collected or not.

The tax-to-GDP is projected to reach 25.4 percent in 2022/23 and expected to reach 25.7 by 2025/26. These percentages are still low as compared to Organisation for Economic Cooperation and Development (OECD) countries average tax-to-GDP of 34.1%.

MAIN TAX PROPOSALS FOR BUSINESSES

Businesses are currently experiencing financial hardships caused by poor economic growth and unreliable electricity supply. Much to the taxpayers' relief, the Minister has announced that no significant tax increases will be proposed.

Corporate Income Tax (CIT)

The CIT rate is currently at 27%. No proposed change to this rate.

Research and development incentives

The research and development incentive was due to end on 31 December 2023. There is now proposal to extend this incentive for 10 years from 1 January 2024.

Expansion of the renewable energy tax incentives

Currently, businesses are allowed to claim costs of the qualifying investment in wind power and concentrated solar energy over a period of three years (50% in year 1, 30% in year 2, and 20% in year 3) in terms of section 12B of the Income Tax Act. The Budget proposed a change to the incentive that will allow businesses to claim 125% of the costs of the qualifying investments in renewable energy with no thresholds on generation capacity in the first year.

Capital Gain Tax (CGT)

CGT is triggered by a disposal or deemed disposal of an asset. The effective rate of CGT remains at 22.4% for companies. No proposed changes.

Value Added Tax

VAT is levied at the standard rate of 15% on the supply of goods and services by registered vendors. No changes in the VAT rate were proposed.

Dividends Tax

Dividends tax is a final tax on dividends at a rate of 20%. No changes were proposed.

Carbon Tax

The carbon tax rate increased from R144 to R159 per tonne of carbon dioxide equivalent, effective from 1 January 2023. The carbon fuel levy for 2023 will increase by 1c to 10c/l for petrol and 11c/l for diesel from 5 April 2023, as required by legislation. It is proposed that the carbon tax cost recovery quantum for the liquid fuels refinery sector increases from 0.63c/l to 0.66c/l from 1 January 2023.

Uganda

BOTSWANA ESWATINI KENYA NIGERIA SOUTH AFRICA UGANDA

Uganda

Rental Income tax amendment.

a. Companies

The rental tax law was amended with effect from July 1, 2022. An allowable deduction of both expenditures and losses is capped to 50% of the gross rental income for companies. No other deductions in form of wear and tear, interest etc. are allowed above the prescribed limit of 50% with the applicable income tax rate of 30%. The excess of expenditures and losses over and above 50% shall not be carried forward to be claimed in subsequent years.

b. Individuals

Rental income in excess of UGX. 2,820,000 per annum earned by the individuals who are residents- individuals, will be subjected to tax at the rate of 12% of the gross rental income. The mortgage interest deduction that has been allowed to individuals is also scrapped. For non-resident individuals, the rate remains 15% of the gross rental income.

Benefits:

- Simplicity of filing tax returns – For individuals, the revenue authority is reportedly designing returns which can be filed using USSD technologies.
- Easy administration with less disputes due to clarity of the law
- Tax is proportionate.

Value Added Tax (VAT) for Non-Resident Ugandans providing Digital Services.

Uganda Revenue Authority (URA) started collecting Value Added Tax (VAT) from registered non-resident electronic services provider companies operating in the Ugandan economy, effective July 1, 2022. URA issued a public notice on January 27, 2022, notifying all non-resident suppliers of electronic services to collect, file and pay this tax on a quarterly basis i.e., by 30th September 31st December 31st March and 30th June.

While filing a quarterly return, non-residents will be required to segregate between sales made to taxable persons and sales made to non-taxable persons. Sales made to taxable persons shall not attract VAT.
Electronic services include all services offered digitally or through an electronic platform.

The services include the following when offered remotely; online advertising, online music streaming, movie streaming services, websites, web- hosting or remote maintenance of programs and equipment, supply of software and software updates, supply of images, text and information, access to databases, self-education packages, music, films, and games of chance, political, cultural, artistic, sporting, scientific and other broad casts and events including television etc.

While many countries around the world implement this measure, Uganda becomes the fourth African country to take this up after South Africa, Nigeria, and Kenya. URA has made initial contact with many of the non-resident services providers such as Google, Microsoft, Netflix, Meta, Spotify, Zoom, Amazon, Apple, Bolt, Uber etc., and some of these entities have registered and paid the tax due. The tax man expects to collect at least UGX 5Bn in taxes from this measure.

This development is one of the steps Uganda is making toward collecting taxes from the e-Commerce economy. Like most countries around the world, Uganda is considering levying income tax on Non-resident entities targeting the income they source in Uganda, a discussion that is still ongoing on the global stage spearheaded by Organization for Economic Co-operation and Development (OECD).

Cash Accounting for Supplies to the Government

Government suppliers will only be required to account for VAT on goods and services whose invoices have been cashed only effective July 1, 2022.
Previously government suppliers would be expected to account for VAT at the point of delivery, invoicing, or payment.

This is meant to help businesses not to pay VAT when they have not received money because it ties up capital resulting in cash flow challenges. This is a good initiative that will help suppliers to free up capital and hence improve their cash flows since government ministries, departments, and agencies can delay payments for up to six or more months.

This affected their cash flow and when they delayed paying the tax due to the delay by the government to pay for the supplies, they were forced to accrue penal interest.

Voluntary Disclosure Programme & Alternative Dispute Resolution mechanism

A tax amnesty in the form of a Voluntary Disclosure Programme (VDP) wherein a non-disclosure by a taxpayer is allowed to be disclosed and the taxpayer only pays the principal tax due without having to pay penalties or interest was introduced into the tax laws of Uganda from July 1, 2019. Once the tax declared under voluntary disclosure is paid, the taxpayer shall be issued a Voluntary Disclosure Certificate (VDC) signed by the Commissioner General. This initiative has raised over UGX 23 billion since its introduction.

The Ugandan tax amnesty involves writing off existing tax liabilities including interest and penalties. However, in the past, this has been for a specified period or covering only a special category of taxpayers. The beauty of the current VDP is that all taxpayers are eligible and are not time-bound. The tax authority offers relief from penalty and interest and in exchange, the taxpayer makes a bona fide effort to analyze their historical tax affairs to identify and disclose all prior instances of non-compliance of all tax heads.

Tax amnesties are becoming increasingly popular around the world. South Africa introduced tax amnesties in 2003 and 2006 and a VDP in 2011. Tax amnesties were introduced in Namibia in December 2016, Ghana in January 2018, Tanzania in July 2018, and Nigeria in July 2017. Tax amnesties like these are part of a cooperative compliance approach adopted by tax administrations to generate a quid pro quo approach to taxation.

Alternative Dispute Resolution (ADR)

In 2021 the law was amended to allow for Alternative Dispute Resolution (ADR) in tax matters.

Traditional dispute resolution mechanisms included an application to the Tax Appeals Tribunal and the High Court. These are costly and time consuming processes. In ADR, after the revenue authority has issued an objection decision, the taxpayer may still engage with the authority for an amicable resolution to the matter.
Other notable benefits of the ADR process are:

- Less costly.
- Quick dispute resolution.
- Less formality.
- Win-win result oriented.
- Less publicity.

Change In VAT and PAYE return filing templates.

On October 11, 2022, the Uganda Revenue Authority (URA) issued a public notice informing the public about changes to the PAYE (Employment tax) and VAT return forms. On October 12, 2022, URA issued another notice clarifying the change relating to the PAYE return form. This alert gives insights of how these changes may apply to taxpayers in Uganda to ensure that compliance is adhered to where applicable.

Changes to the VAT Return filling template

Under schedule 3 of the VAT Return against the VAT deferred at importation to only permit amounts that exist in ASYCUDA and are supported by fiscalised import receipts from EFRIS. EFRIS refers to Electronic Fiscal Receipting and Invoicing Solution introduced by URA, it ensures that URA has real-time visibility of invoices and receipts issued by taxpayers mandated to connect to the system, currently, it is VAT registered taxpayers required to transact via this system.

This change affects VAT registered taxpayers who have imported goods and have been granted a VAT deferment facility when importing plant and machinery. The persons that may apply for VAT deferment are those who have imported plant and machinery for use in the manufacture of goods or the provision of value-added services, and the tax due is at least USD 4,000.

Changes to the PAYE Return filling template

The PAYE Return has been changed to reflect a 40% tax charge on the employment income of employees who are liable to a fixed rate where the amount is more than UGX 10 million. This was previously set at 30% in the PAYE return form regardless of the amount paid.

"The change applies to both "Residents" and "Non-Residents" where an employee is in "secondary employment" and whose chargeable income is in excess of UGX 10,000,000 per month."

In the PAYE return, this change is being implemented under schedule 1, particularly if "YES" is selected under column S, as follows in respect to secondary employees: If the amount is UGX 10 million or below, a fixed rate of 30% is applied to the whole amount.

If the amount is more than UGX 10 million, a fixed rate of 40% is applied is to the whole amount.

The most common category of personnel that often qualify as secondary employees are directors and part-time employees where it is known that the employee has another source of employment.

Change of method declaration of transactions from Excel-based returns to web-based returns

Uganda Revenue Authority (URA) introduced web-based form for filing of provisional returns for both non-individuals and individuals for the period commencing July 1, 2022.

Previously, provisional returns for both non-individuals and individuals were filed using an excel-based form accessible from the URA portal under "download online forms" thereafter a created upload file was uploaded onto the URA web-portal.

The rationale is to simplify and improve efficiencies in the process. The menu is easier for a taxpayer to navigate and identify the type of return required. The system shall now require minimal data such as amendment period only to enable taxpayers to complete an amendment.

Electronic Fiscal Receipting and Invoicing System (EFRIS) & Digital Tax Stamps (DTS)

a. Electronic Fiscal Receipting and Invoicing System (EFRIS)

EFRIS is a new tool launched by the Uganda Revenue Authority (URA) as part of its Project Kakasa which in turn was formulated as part of the Domestic Revenue Mobilization Program (DRMP) which is an initiative that mitigates the challenges around non-compliances by certain taxpayers. All VAT registered taxpayers are mandated to issue e-receipts and e-invoices for all sales and purchases of goods and services.

EFRIS mainly consists of three components:

i. e-invoicing – This is a tool that supports integration between the taxpayer's invoicing system or ERP and a URA web portal, or a client application installed on a desktop or mobile device to send, generate e-invoices /e-receipts, and store invoice information in an electronic format without the use of paper-based invoices.

ii. Electronic Fiscal Devices (EFD) – This is a GPRS based device for sales data control. They possess secure fiscal memory and at least one Point of Sale connected to allow communication between the device with URA's servers to enable the focalization of transaction data.

iii. Electronic Dispenser Controller (EDC) - Specific device designed to monitor pump Gas (Fuel). The compressor gun and its gas pump capacity are monitored, and the receipt information is transferred to the EFDs to generate fiscal receipts.

Depending on the nature of the business, a taxpayer can use one of three co ponents to comply with EFRIS.

The main benefit of the EFRIS to the taxpayer is Ease in the VAT refund process.

b. Digital Tax Stamps (DTS)

In accordance with Section 19A (1) of the Tax Procedures Code Act 2014, a person dealing in goods whether locally manufactured or imported shall affix a tax stamp on any goods locally manufactured or imported as prescribed by the Minister of Finance, Planning and Economic Development to the Minister has prescribed Beer, Soda, Spirits, Wines, Mineral water, Tobacco products, Cement and Sugar whether locally manufactured or imported into Uganda to be affixed with Digital Stamps.

All premises for manufacturing or packaging of the above gazetted goods shall be registered for Excise Duty in accordance with the Excise Duty Act.

Manufacturers and importers of the above-mentioned goods are required to have adequate space and tools to facilitate affixing and activating the digital tax stamps on these products at their registered premises. The main benefit expected out of this initiative is the Ease of tax collection by URA.

It is important to note that there are severe penalties for non-compliance with EFRIS/DTS. A taxpayer who fails to affix tax stamps on goods prescribed or activate tax stamps commits an offense and is liable, on conviction, to a fine not exceeding one thousand five hundred currency points (UGX 30,000,000) or imprisonment not exceeding 10 years or both.

A taxpayer who does not issue an electronic invoice, an electronic or employ an electronic fiscal device in accordance with section 73A, commits an offense and is liable, on conviction, to a fine not exceeding one thousand five hundred currency points (UGX 30,000,000) or imprisonment not exceeding 10 years, or both.

Whistle blowers proposed payment.

The payment to informers/whistleblowers on the provision of information leading to the identification of unassessed tax or duty was introduced as below.

Provide information leading to the identification of unassessed tax or duty - 1% of the tax or duty assessed or UGX. 15,000,000 whichever is less.

Provide information leading to the recovery of unassessed tax or duty - 5% of the tax or duty or UGX.100,000,000 whichever is less.

Automatic Exchange of Information (AEOI) – Sec 88 Income Tax Act

The Companies Act in Uganda has been amended to require every company and Limited Liability Partnership registered in Uganda to keep a register of its beneficial owners.

A “beneficial owner” means a natural person who has final ownership or control of a company/ partnership or a natural person on whose behalf a transaction is conducted in a company/partnership and includes a natural person who exercises ultimate control over a company/ partnership.

The Companies (Amendment) Act (2022) and the Partnership (Amendment) Act (2022) require every company and Limited Liability Partnership registered in Uganda to keep a register of its beneficial owners.

This beneficial owner register discloses the personal information of the beneficial owners of a company or partnership, the nature of ownership or control they have in the company or a partnership, and the date they became or ceased to be beneficial owners. The law requires that notice of the creation of the register be given to the Registrar of Companies within 14 days.

The format of the notices and information required to be filed are elaborated in the Companies (Beneficial Owner) Regulations,2023, and the Partnership (Beneficial Owner) Regulations, 2023.
All companies and Limited Liability Partnerships are to file their beneficial owners' information with the Registrar of Companies by filing the form accessible on our website www.ursb.go.ug within 30 days from the date of this notice. Companies or partnerships will not be allowed to make any other registrations unless they have provided beneficial owners' information. All applications for incorporation of companies and Limited Liability Partnerships will only be processed upon submission of the beneficial owners' information.

This is relevant as Uganda is participating in the Automatic Exchange of Information by Financial Institutions such as banks where beneficial ownership will be considered when determining whether or not the information is to be shared.

There are severe penalties for non-compliance with the Automatic Exchange of Information.

A fine of 2,500 Currency points (UGX 50,000,000) for each day of default or imprisonment not exceeding 10 years.

- Failure to file an information return relating to the automatic exchange of information.
- Failure to maintain records for purposes of automatic exchange of information.
- Making a false or misleading statement in the information return
- Omitting from a statement made in the information return

Income from the carriage of passengers, or cargo or mail which is not embarked in Uganda, is not subject to tax as income derived from a Ugandan-Source Services contract:
The amendment to Section 86 of the ITA is aimed at clarifying the position that no Withholding tax is chargeable on income derived from the carriage of passengers who do not embark or international transport of cargo or mail which is not embarked in Uganda.

Customs Amendments
In a move aimed at encouraging import substitution as well as encouraging investment in domestic manufacturers, the East African Community agreed to the introduction of an additional fourth band to the East African Community External Tariff (CET). Items included under the fourth band shall attract import duty at 35%. Some of the products include dairy and meat products, cereals, cotton and textiles, iron and steel, edible oils, beverages & spirits, furniture, leather products, fresh cut flowers, fruits and nuts, sugar and confectionery, coffee, tea and spices, textiles and garments, head gears, ceramic products and paints and recently shoes have been included among others. It should be noted that the new fourth band is to be affected across all the East African Community states.

The above amendment is line with the government strategy of "BUBU" (Buy Uganda Build Uganda).

About the Africa Tax Desk

About the Africa Tax Desk

For more than a hundred years, Grant Thornton has been supporting dynamic organizations in the realization of their strategic ambitions. Our strong presence in the different countries of the continent, technical ability and vast international experiences allow us to provide our clients with a unique quality of service.

Africa is the 2nd largest and most populated continent. It has vast natural resources, exponential population growth and increased access to public and private capital; all assets that make this continent a lucrative business platform with enormous potential.

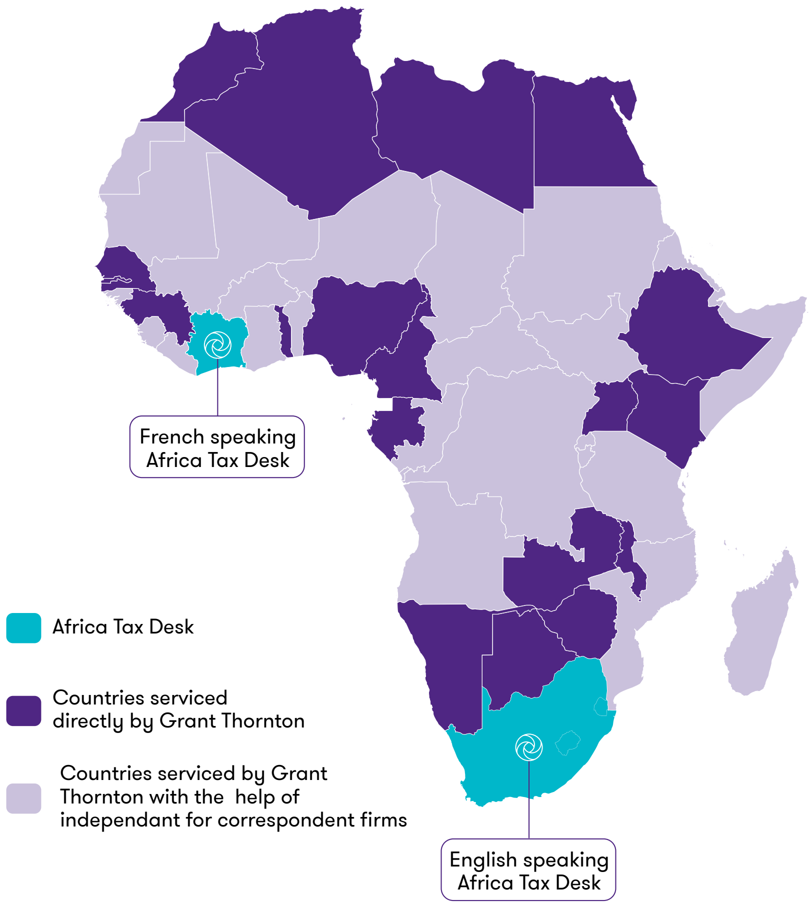
The Africa Tax Desk is strategically developed to provide a three-step solution to multinational corporations operating in Africa.
Step 1 - A single point of contact
Step 2 - An integrated service offering
Step 3 – A tailored solution

Grant Thornton's Ambition

To provide, through a strategic hub, "Africa Desk", a differentiating solution adapted to the context of your investments in Africa.

Grant Thornton has a strong presence in Africa. The firm is present in 22 African countries with 43 offices. The presence of regional hubs ensures the mobilisation and coordination of teams in order to exchange resources and specific technical or sectoral skills. Sub-regional leaders facilitate rapid and agile collaboration between countries.

Grant Thornton's legal and tax practice is centralised through the "Africa Desk" to allow coordination of your multi-country needs; a single point of contact and a uniform and precise response to your needs. In West Africa, the West and Central Africa Desk is based in Abidjan. We know how to serve cross-border clients, establish strategic partnerships, anticipate continental issues, and mobilize the best specialists on cross-cutting issues.



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