

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2021**

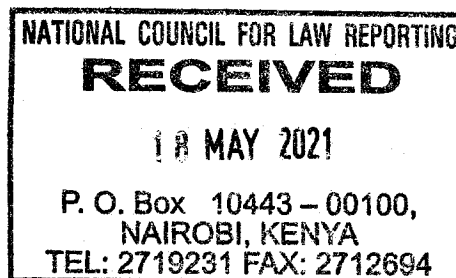
**NAIROBI, 5th May, 2021**

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# THE FINANCE BILL, 2021

## A Bill for

**AN ACT of Parliament to amend the law relating to various taxes and duties; and for matters incidental thereto**

**ENACTED** by the Parliament of Kenya, as follows—

### PART I—PRELIMINARY

1. This Act may be cited as the Finance Act, 2021, and shall come into operation, or be deemed to have come into operation, as follows—

Short title and commencement.

(a) sections 7, 8, 9, 10, 12, 13(a), 13(b), 13(e), 33, 43, 49, 51, 63, 65, 65 and 66, on the 1st January, 2022; and

(b) all other sections, on the 1st July, 2021.

### PART II—INCOME TAX

2. Section 2 of the Income Tax Act is amended—

Amendment of section 2 of Cap. 470.

(a) by inserting the following new definitions in proper alphabetical sequence—

“control”, in relation to a person, means—

(a) that the person, directly or indirectly, holds at least twenty per cent of the voting rights in a company;

(b) a loan advanced by the person to another person constitutes at least seventy per cent of the book value of the total assets of the other person excluding a loan from a financial institution that is not associated with the person advancing the loan;

(c) a guarantee by the person for any form of indebtedness of another person constitutes at least seventy per cent of the total indebtedness of the other person excluding a guarantee from a financial institution that is not associated with the guarantor;

- (d) the person appoints more than half of the board of directors of another person or at least one director or executive member of the governing board of that person;
- (e) the person is the owner of or has the exclusive rights over the know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of a similar nature, on which another person is wholly dependent for the manufacture or processing of goods or articles or business carried on by the other person;
- (f) the person or a person designated by that person—
  - (i) supplies at least ninety per cent of the supply of the purchases of another person; or
  - (ii) in the opinion of the Commissioner, influences the prices or other conditions relating to the supply of the purchases of another person;
- (g) the person purchases or designates a person—
  - (i) to purchase at least ninety per cent of the sales of another person; or
  - (ii) in the opinion of the Commissioner, influences the price or any other condition of the sales of another person;
- (h) the person has any other relationship, dealing or practice with another person which the Commissioner may deem to constitute control;

“infrastructure bond” means a bond issued by the Government for the financing of a strategic public infrastructure facility including a road, hospital, port, sporting facility, water and sewerage system, or a communication network;

- (b) by deleting the definition of “permanent establishment” and substituting therefor the following new definition—

“permanent establishment” includes—

- (a) a fixed place of business through which business is wholly or partly carried on and includes a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources, a warehouse in relation to a person whose business is providing storage facilities to others, a farm, plantation or other place where agricultural, forestry plantation or related activities are carried on and a sales outlet;
- (b) a building site, construction, assembly or installation project or any supervisory activity connected to the site or project, but only if it continues for a period of more than one hundred and eighty-three days:

Provided that for the purpose of determining whether the period specified in this paragraph has been exceeded—

- (i) where a person carries on activities at a place that constitutes a building site or construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed thirty days but do not exceed one hundred and eighty-three days, and
- (ii) connected activities are carried on at the same building site or construction or installation project during different periods of time, each exceeding thirty days, by one or more enterprises closely related to the first-mentioned enterprise,

the different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on activities at that building site or construction or installation project;

- (c) the provision of services, including consultancy services, by a person through employees or other personnel engaged for that purpose, but only where the services or connected business in Kenya, continue for a period of, or periods exceeding in the aggregate, ninety-one days in any twelve-month period commencing or ending in the year of income concerned;
- (d) an installation or structure used in the exploration for natural resources:

Provided that the exploration continues for a period of not less than ninety-one days;

- (e) a dependent agent of a person who acts on their behalf in respect of any activities which that person undertakes in Kenya including habitually concluding contracts, or playing the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the person,

but excludes the following activities where the activities are of a preparatory or auxiliary character—

- (i) the use of facilities solely for the purpose of storage, or display of goods or merchandise belonging to the enterprise;
- (ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, or display;
- (iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;