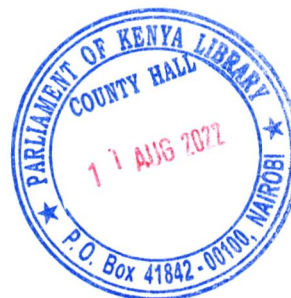


REPUBLIC OF KENYA



NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – FOURTH SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

REPORT ON THE CONSIDERATION OF PUBLIC PETITION ON WAIVER
OF TAXES LEVIED ON RAW MATERIALS USED IN THE MANUFACTURE
OF SANITARY TOWELS (PADS) AND TAMPONS

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

OCTOBER, 2016

TABLE OF CONTENT

ABBREVIATIONS	3
CHAIRPERSON'S FOREWORD.....	4
EXECUTIVE SUMMARY	5
MANDATE OF THE COMMITTEE.....	6
1.1. COMMITTEE MEMBERSHIP.....	7
1.2. COMMITTEE SECRETARIAT.....	- 8 -
1.3. Committal and Consideration of the Petition.....	- 8 -
1.4. Committee Observations.....	- 8 -
1.5. Response to the Prayers in the petition.....	- 8 -
2.0. BACKGROUND INFORMATION	- 9 -
2.1. Taxation Regime on Sanitary Towels and Tampons in Kenya.....	- 9 -
2.2. Contents of the petition.....	- 10 -
3.0. SUBMISSIONS AND EVIDENCE	- 10 -
3.1. Submission by the Petitioner	- 11 -
3.2. Submission by the National Treasury	- 12 -
4.0. COMMITTEE OBSERVATIONS	- 13 -
5.0. COMMITTEE RECOMMENDATIONS	- 14 -

ABBREVIATIONS

1. VAT - Value Added Tax
2. GDP - Gross Domestic Product
3. EAC - East African Community

CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings of the consideration of the Public Petition on waiver of taxes levied on raw materials used in the manufacture of sanitary towels (pads) and tampons was committed to the Committee on 17th February, 2016 pursuant to Standing Order 225

The Petition seeks waiver of VAT and customs duties on the raw materials for the manufacture of sanitary towels (pads) and tampons. The petition further seeks VAT exemption for the sanitary towels (pads) and tampons supplied in Kenya.

On behalf of the Departmental Committee on Finance, Planning & Trade and pursuant to provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Public Petition on waiver of taxes levied on raw materials used in the manufacture of sanitary towels (pads) and tampons.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank the National Treasury for their participation in scrutinizing the petition.

Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

HON. BENJAMIN LANGAT, MP

EXECUTIVE SUMMARY

The Public Petition on waiver of taxes levied on the raw materials used in the manufacture of sanitary towels (pads) and tampons was presented to the National Assembly by the Hon. Stephen Mule, MP Pursuant to the Standing Order 225(2) and the petition to Parliament Act, 2012 and thereafter it was committed to the Departmental Committee on Finance, Planning and Trade on 17th February, 2016.

The Committee engaged the petitioners and the Ministry of the National Treasury whose views on the prayers are contained in this report.

In the process of considering the petition the three prayers sought by the petitioner were sufficiently addressed in the Finance Act 2016 by inserting the relevant respective tariff numbers for the stated raw materials in the First Schedule to the VAT Act 2013. By this, these raw materials are exempted from VAT and therefore these prayers are already overtaken by this legislation.

MANDATE OF THE COMMITTEE

The Committee on Finance, planning & Trade is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to:-

- (a) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- (b) Study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
- (c) study and review all legislation referred to it;
- (d) study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;
- (f) vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (g) Reports and makes recommendations to the House as often as possible, including recommendation of proposed legislation.

1.1. COMMITTEE MEMBERSHIP

Chairperson	The Hon. Benjamin Langat, MP
Vice Chairperson	The Hon. Nelson Gaichuhie, MP
Members	The Hon. Dr. Oburu Oginga, MP
	The Hon. Eng. Shadrack Manga, MP
	The Hon. Jimmy Nuru Angwenyi, MP
	The Hon. Ahmed Shakeel Shabbir Ahmed, MP
	The Hon. Sammy Mwaita, MP
	The Hon. Jones M. Mlolwa, MP
	The Hon. Anyanga, Andrew Toboso, MP
	The Hon. Joash Olum, MP
	The Hon. Patrick Makau King'ola, MP
	The Hon. Abdullswamad Sheriff, MP
	The Hon. Sumra Irshadali, MP
	The Hon. Ogendo Rose Nyamunga, MP
	The Hon. Iringo Cyprian Kubai, MP
	The Hon. Dennis Waweru, MP
	The Hon. Tiras N. Ngahu, MP
	The Hon. Sakaja Johnson, MP
	The Hon. Ronald Tonui, MP
	The Hon. Mary Emase, MP
	The Hon. Joseph Limo, MP
	The Hon. Lati Lelelit, MP
	The Hon. Kirwa Stephen Bitok, MP
	The Hon. Daniel E. Nanok, MP
	The Hon. Abdul Rahim Dawood, MP
	The Hon. Sakwa John Bunyasi, MP
	The Hon. Alfred W. Sambu, MP
	The Hon. Sammy Koech, MP
	The Hon. Abdikadir Ore Ahmed, MP

1.2.COMMITTEE SECRETARIAT

First Clerk Assistant	Evans Oanda
Third Clerk Assistant	Nicodemus Maluki
Third Clerk Assistant	Fredrick Otieno
Legal Counsel II	Emma Esendi
Research Officer III	Erick Ososi
Research Officer III	Sharon Rotino

1.3. Committal and Consideration of the Petition

The Public Petition on waiver of taxes levied on the raw materials used in the manufacture of sanitary towels (pads) and tampons was presented to the National Assembly by the Hon. Stephen Mule, MP Pursuant to the Standing Order 225(2) and the petition to Parliament Act, 2012. The petition was dated on 17th February, 2016

1.4. Committee Observations

On the analysis of the petition, the Committee noted that petition generally complied with the thresholds set in the Constitution, petitions to Parliamentary Act, 2012 and Standing Orders. The Committee further noted the following:

- i. That out of the many brands sold locally only one manufactured locally (Medicott). Some brands were initially manufactured locally by Procter and Gamble, Johnson and Johnson before they opted to move.
- ii. Making the raw materials for the manufacture of sanitary towels and tampons zero rated would lower the costs of production which intern will be reflected in the prices of such finished goods.
- iii. Making the finished tampons and sanitary towels zero rated will ensure that such manufacturers can claim any amount of input VAT. As a result, there will be no additional costs in form of taxes passed to the consumer.
- iv. The vision 2030 is based on three pillars among them is the economic development. When local industries are encouraged then such industries will create jobs and lead to economic development for the country. These industries would also lead to increased GDP and government revenue. This would also lead to availability of fair priced sanitary towels in the country.

1.5. Response to the Prayers in the petition

- a) Intervenes to ensure that Parliament exempts, in law or administratively the VAT and Custom Duties on raw materials, specifically for the manufacture of sanitary pads in the 2016/17 financial year.
- b) Urges the government to exempt the supply of sanitary pads in Kenya to reduce the cost of the final products; and
- c) Ensures that the VAT exemption is implemented not only for the 2016/2017 financial year, but also in the future years for the continued prosperity of the girl child education in the country.

The above three prayers sought by the petitioner are sufficiently addressed in the Finance Act 2016 by inserting the relevant respective tariff numbers for the stated raw materials in the First Schedule to the VAT Act 2013. By this, these raw materials are exempted from VAT and therefore these prayers are already overtaken by this legislation.

2.0. BACKGROUND INFORMATION

The Petition seeks waiver of VAT and customs duties on the raw materials for the manufacture of sanitary towels (pads) and tampons. The petition further seeks VAT exemption for the sanitary towels (pads) and tampons supplied in Kenya.

2.1. Taxation Regime on Sanitary Towels and Tampons in Kenya

- In 1995 the custom duty rate of 40% was enacted by the legal notice number 13 of 1995
- In 2005 the legal notice for customs duty came into force on 1st July, 2005 vide legal notice number 1 gazetted on 15th September 2005
- Prior to amendments made in the VAT Act, Chapter 476 laws of Kenya, by the Finance Act 2005 the supply of sanitary towels and tampons was zero rated. Customs duty was chargeable at the rate of 40%
- In 2004, the government made sanitary towels and tampons exempt from VAT to increase the use of products and bring down their price. The Finance Act, 2004 amended the Value Added Tax Act, Cap 476 by inserting sanitary towels and tampons in Part 1 of the 2nd schedule. This has an effect of making the supply or importation of sanitary towels and tampons exempt supplies.
- Further amendments were made where the sanitary towels and tampons were zero rated through the Finance Act, 2005 which deleted part B of the First Schedule of the Value Added Tax Act, Cap 476 and inserted Zero rated goods. The final exempt products were also exempt from the duty.
- In 2013 through paragraph 39 of the First schedule of the VAT Act, 2013 states that supply or importation of sanitary towels (pads and tampons) is an exempt supply. The section 2 of the VAT Act 2013 provides that “exempt supplies” means supplies specified in the First Schedule which are not subject to tax.

2.2. Contents of the petition

The petitioners wished to draw the attention of the House on the following:-

- i. **THAT**, Kenya, as the most developed economy in East and Central Africa, has a manufacturing industry which is largely characterized by the export of raw materials and import of goods which have already been value- added ;
- ii. **THAT**, the government has exempted the supply or importation of sanitary towels and tampons;
- iii. **THAT**, this gives importers of sanitary products an upper hand in the industry, while also bringing about tax inequality as manufacturers who have to incur input VAT and duty upon importation of raw materials for production face higher tax implications than those importing finished products;
- iv. **THAT**, these extra costs and possible losses incurred by the manufacturers may lead them to opt to import or relocate their manufacturing plants to more favourable business environment;
- v. **THAT**, due to tax imbalance, various multinationals like Johnson & Johnson, Proctor and Gamble, Eveready East Africa, Cadbury Kenya, Palmolive, among others have moved to other countries in the region like Uganda and Egypt which have better tax regimes;
- vi. **THAT**, this has led to loss of revenues for the government and jobs for locals in the country;
- vii. **NOTING THAT**, the supply of sanitary towels promotes education, productivity, hygiene and a self- health environment for the girl child, which ultimately boosts economic development in the country, and is in line with government initiatives to promote girl child education;
- viii. **THAT**, the matter in respect of which this petition is made is not pending before a Court of Law.

The petitioners therefore prayed that the National Assembly, through the Departmental Committee on Finance, Planning and Trade:-

- d) Intervenes to ensure that Parliament exempts, in law or administratively the VAT and Custom Duties on raw materials, specifically for the manufacture of sanitary pads in the 2016/17 financial year;
- e) Urges the government to exempt the supply of sanitary pads in Kenya to reduce the cost of the final products; and
- f) Ensures that the VAT exemption is implemented not only for the 2016/2017 financial year, but also in the future years for the continued prosperity of the girl child education in the country.

3.0. SUBMISSIONS AND EVIDENCE

Having been seized of the Petition, the Committee called for official government position on the petition from the National Treasury. The Committee further invited the petitioners for the briefing session on 25th February, 2016. The evidence adduced by the petitioners and the National Treasury are contained hereunder.

3.1. Submission by the Petitioner

On 1st March, 2016 Hon. Stephen Mutinda Mule, MP accompanied by the other petitioners appeared before the Committee to brief on the contents of the petition. In their submission the Committee was informed as follows:-

- i. Proper menstrual care and hygiene requires that girls and women to have adequate access to clean sanitary towels and tampons, however this has been a challenge in Kenya. In the bid to address this challenge, the government started the sanitary towels programme under the ministry of Education in the financial year 2011/12.
- ii. Access to clean and adequate sanitary towels and tampons would ensure proper hygiene and sanitation, however statistics have shown that great number of female population who are of reproductive age do not have access to clean and safe sanitary products. Where they are available the products tend to be very unfordable.
- iii. The market survey carried in the supermarkets shows that the lowest cost of a packet of the sanitary towels costs Kshs. 50. Such packets contain between 5 to 7 pads which would mean that it can only be used for approximately 2days. Some of the other renowned brands such as always and kotex go for a higher price usually over Kshs. 100.
- iv. The high cost are attributed to high costs of production, high cost of raw materials and resultant taxes that make the costs even higher. The raw materials are taxable at standard rate of VAT while the finished sanitary towels and tampons are exempt from VAT. The exempt status was an effort by the government to make such products affordable but on the contrary such a status only acted to shift the tax burden from the consumer to the manufacturer, however the manufacturer in the real sense passes this burden to the consumer through the pricing of such products.
- v. The raw materials used for manufacture of sanitary towels and related products are as follows
 - Super absorbent polymer aqualic CA W4S-(SAP)
 - Carrier Tissue, white, 1ply 14.5 GSM
 - IP super soft Fluff pulp-FR FLUFF 310 treated pulp 488* 125mm
 - Perforated PE film18Gsm
 - SPUN S BLANC/ S-tex top sheet non-woven
 - Multilayer absorbent innovative Non-woven Airlid paper with Super absorbent polymer 180gsm/67
 - Multilayer absorbent innovative Airlid paper with no super absorbent polymer 180gms/67
 - Hot melt adhesive/pressure sensitive adhesive

- Plain polyethylene film/LDPE white back sheet
- Plain polyethylene film/PE pouch
- Akroprem white 35gsm/ Release Paper
- Airten PHIL- 30 Gsm- Blue/Acquisition layer

3.2. Submission by the National Treasury

Through his letter dated 15th March, 2016 and referenced Ref. ZZ/TS/GP/30 the Principal Secretary, Dr. Kamau Thugge, CBS submitted the Ministries comments with reservations on the petition as follows:-

- i. Currently the government is supplying sanitary towels (pads) and tampons through budgetary allocation to the Ministry of Education in Order to promote education, hygiene and self- health environment for the girl child in line with the government initiatives to promote girl child education in the Country
- ii. Contrary to the request by the petitioners to exempt the supply of sanitary towels(pads) and tampons in the Country , the same are exempt from VAT as stated in the declaration by the petitioners
- iii. The Manufacturers of sanitary towels (pads) and tampons can access duty free raw materials for the manufacture of the same under the EAC Duty Free Remission Scheme.
- iv. Exempting the raw materials for the manufacture of sanitary towel (pads) and tampons from VAT would distort the VAT regime and disadvantage the manufacturers of raw materials since they will not be able to recover their input tax which in turn will make the materials and therefore the towels (pads) and tampons more expensive.

The Ministry of the National Treasury feels that all the prayers sought by the petitioners have already been addressed hence the National Treasury doesn't not support the waiver of the taxes for raw materials used in the manufacture of sanitary towels (pads) and tampons

4.0. COMMITTEE OBSERVATIONS

The Committee observed as follows:-

- i. That out of the many brands sold locally, a few are manufactured locally. Some brands were initially manufactured locally by Procter and Gamble, Johnson and Johnson before they opted to move.
- ii. Making the raw materials for the manufacture of sanitary towels and tampons zero rated would lower the costs of production which in turn will be reflected in the prices of such finished goods.
- iii. Making the finished tampons and sanitary towels zero rated will ensure that such manufacturers can claim any amount of input VAT. As a result, there will be no additional costs in form of taxes passed to the consumer.
- iv. The vision 2030 is based on three pillars among them is the economic development. When local industries are encouraged then such industries will create jobs and lead to economic development for the country. These industries would also lead to increased GDP and government revenue. This would also lead to availability of fair priced sanitary towels in the country.

5.0. COMMITTEE RECOMMENDATIONS

Having considered the petition, the Committee noted that the three prayers sought by the petitioner have already been answered through the Finance Bill, 2016 which had proposed amendments to the Value Added Tax Act and the Excise Duty Act. The respective tariff numbers for the stated raw materials have been included for exemptions in the First Schedule of VAT Act 2013.

SIGNED.......... DATE.....12th Oct 2016.....

THE HON. NELSON RIBUTHI GAICHUHIE, MP

VICE CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING AND TRADE

MINUTES OF THE 15TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON TUESDAY 1ST MARCH, 2016 IN COMMITTEE ROOM, 11TH FLOOR PROTECTION HOUSE, PARLIAMENT BUILDINGS AT 10:00AM.

PRESENT

1. Hon. Nelson Gaichuhie, MP
2. Hon. Shakeel Shabbir, MP
3. Hon. Timothy Bosire, MP
4. Hon. Ogendo Rose Nyamunga, MP
5. Hon. Jones Mlolwa, MP
6. Hon. Lati Lelelit, MP
7. Hon. Abdullswamad Shariff, MP
8. Hon. Sammy Mwaita, MP
9. Hon. Abdul Rahim Dawood, MP
10. Hon. Ronald Tonui, MP
11. Hon. Sumra Irshadali, MP
12. Hon. Anyanga Andrew Toboso, MP
13. Hon. Mary Emase, MP
14. Hon. Patrick Makau, MP
15. Hon. Iringo Cyprian Kubai, MP
16. Hon. Sakwa John Bunyasi, MP

Vice-Chairperson

ABSENT WITH APOLOGIES

1. Hon. Benjamin Langat, MP
2. Hon. Dr. Oburu Oginga, MP
3. Hon. Jimmy Nuru Angwenyi, MP
4. Hon. Daniel Epuyo Nanok, MP
5. Hon. Tiras Ngahu, MP
6. Hon. Kirwa Stephen Bitok, MP
7. Hon. Alfred Sambu, MP
8. Hon. Eng. Shadrack Manga, MP
9. Hon. Joseph Limo, MP
10. Hon. Joash Olum, MP
11. Hon. Sakaja Johnson, MP
12. Hon. Dennis Waweru, MP
13. Hon. Sammy Koech, MP

Chairperson

IN ATTENDANCE

- | | | |
|-------------------------|---|-----------------------|
| 1. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 3. Ms. Sharon Rotino | - | Research Officer |

PETITIONERS

- | | | |
|----------------------------------|---|------------------------------------|
| 1. Hon. Stephen Mutinda Mule, Mp | - | Member of Parliament |
| 2. Dr. S.K. Arimi | - | Director Medipharm |
| 3. Mr. Evans M. Kithinji | - | Consultant (Tax wise) |
| 4. Ms. Joyce W. Njomo | - | Consultant (Tax wise) |
| 5. Mr. Samuel Njoroge | - | Consultant (Tax wise) |
| 6. Ms. Hellen Mithamo | - | Manager (Vision Brand East Africa) |

MIN.NO. DCF/063/2016: PRELIMINARIES

The Ag. Chairperson Hon. Abdul Rahim Dawood, MP called the meeting to order at 10:30am followed by a word of prayer from Hon. Iringo Cyprian Kubai, MP.

MIN.NO. DCF/064/2016: CONSIDERATION OF A PETITION ON WAIVER OF TAXES FOR RAW MATERIALS USED IN PRODUCTION OF SATINARY TOWELS BY HON. STEPHEN MUTINDA MULE,MP.

Hon. Stephen Mutinda Mule, Mp together with the above named petitioner's appeared before the Committee and submitted as follows:

- i. Kenya is the most developed economy in East and Central Africa, and has a manufacturing industry which is largely characterised by the export of raw materials and import of goods which have already been value-added;
- ii. The government has exempted the supply or importation of sanitary towels and tampons;
- iii. The importers of sanitary products are given an upper hand in the industry, while also bringing about tax inequality as manufacturers who have to incur input VAT and duty upon importation of raw materials for production face higher tax implications than those importing finished products;
- iv. The extra costs and possible losses incurred by the manufacturers may lead them to opt to import or relocate their manufacturing plants to more favourable business environments;
- v. Due to this tax imbalance, various multinationals like Johnson & Johnson, Proctor and Gamble, Eveready East Africa, Cadbury Kenya, Palmolive, among many others, have moved to other countries in the region like Uganda and Egypt, which have better tax regime;
- vi. There has been loss of revenues for the government and jobs for locals in the country;
- vii. Noting that the Supply of sanitary towels promotes education, productivity, hygiene and self- health environment for the girl child, which ultimately boosts economic development in the Country , and in line with government initiatives to promote girl child education ;

viii. The matter in respect of this petition is not pending before a court of Law.

The petitioners pray that the National Assembly, through the Departmental Committee on Finance, Planning and Trade:-

- i. Intervenes to ensure that Parliament exempts, in law or administratively, THE vat AND CUSTOM Duties on raw materials, specifically for the manufacture of sanitary pads in the 2016/17 Financial year;
- ii. Urges the government to exempt the supply of sanitary pads in Kenya to reduce the cost of the final product; and
- iii. Ensures that the VAT exemption is implemented not only from the 2016/17 financial year, but also in future years, for the continued prosperity of girl child education in the country.

Committee Observations

- a) In order to make an informed decision the Committee advocated for a further study of the raw materials used to manufacture sanitary towels by the relevant bodies with the view of making sure that the said raw materials are not used to make any other products.
- b) To enable the Committee make an informed decision on the petition, the Committee asked the Parliamentary Budget Office to prepare a brief and present to the Committee as they await comments from the National Treasury.

MIN.NO. DCF/065 /2016: ANY OTHER BUSINESS

The Vice Chairperson adjourned the meeting at 12:05 pm.

Signed..........date.....17-02-2016.....

Chairperson

MINUTES OF THE 75TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON THURSDAY 25TH AUGUST, 2016 IN THE COMMITTEE ROOM, 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00AM

PRESENT

1. Hon. Benjamin Langat, MP
2. Hon. Nelson Gaichuhie, MP
3. Hon. Shakeel Shabbir, MP
4. Hon. Ronald Tonui, MP
5. Hon. Mary Emase, MP
6. Hon. Abdul Rahim Dawood, MP
7. Hon. Lati Lelelit, MP
8. Hon. Iringo Cyprian Kubai, MP
9. Hon. Dr. Oburu Oginga, MP
10. Hon. Sammy Mwaita, MP
11. Hon. Abdullswamad Shariff, MP
12. Hon. Anyanga Andrew Toboso, MP
13. Hon. Daniel Epuyo Nanok, MP
14. Hon. Sakwa John Bunyasi, MP
15. Hon. Kirwa Stephen Bitok, MP
16. Hon. Ogendo Rose Nyamunga, MP

Chairperson
Vice-Chairperson

APOLOGIES

1. Hon. Eng. Shadrack Manga, MP
2. Hon. Jimmy Nuru Angwenyi, MP
3. Hon. Sumra Irshadali, MP
4. Hon. Patrick Makau King'ola, MP
5. Hon. Abdikadir Ore Mohammed, MP
6. Hon. Sammy Koech, MP
7. Hon. Jones Mlolwa, MP
8. Hon. Joseph Limo, MP
9. Hon. Alfred Sambu, MP
10. Hon. Tiras Ngahu, MP
11. Hon. Dennis Waweru, MP
12. Hon. Sakaja Johnson, MP
13. Hon. Joash Olum, MP

KENYA NATIONAL ASSEMBLY

- | | | |
|-------------------------|---|-----------------------|
| 1. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 2. Mr. Fredrick Otieno | - | Third Clerk Assistant |
| 3. Ms. Emma Esendi | - | Legal Counsel |
| 4. Mr. Robert Nyaga | - | Chief Fiscal Analysts |
| 5. Mr. Josephat Motonu | - | Fiscal Analyst |
| 6. Mr. Thomas Ogwel | - | Fiscal Analyst |
| 7. Mr. Eric Osoi | - | Research Officer |

MIN.NO. DCF/275 /2016: PRELIMINARIES

The Chairperson called the meeting to order at 10.30am and prayed.

MIN.NO. DCF/276/2016: ADOPTION OF THE AMENDMENTS TO THE FINANCE BILL, 2016

The Committee adopted its amendments on the Finance Bill, 2016 as follows:-

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 3-

Amendment of section 10 of Cap. 470. **3A.** Section 10 of the Income Tax Act is amended by deleting paragraph (g).

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 4 -

Amendment of section 15 of Cap. 470. **4A.** Section 15 of the Income Tax Act is amended in -

- (a) subsection (2) by inserting the following new paragraph immediately after paragraph (y)-
“(z) expenditure incurred in that year of income by a person sponsoring sports, with the prior approval of the Cabinet Secretary responsible for sports”;
- (b) subsection (3) (b) by deleting the words “one hundred and fifty” and substituting therefor the words “three hundred”.

NEW CLAUSE

THAT the Bill be amended by inserting the following new clause immediately after clause 5 -

Amendment of section 34 of Cap. 470. **5A.** Section 34 of the Income Tax Act is amended-

- (a) in subsection (1) by deleting paragraph (m); and
- (b) in subsection (2) by deleting the following paragraph (i) -

- (i) winnings payable by bookmakers to punters (players).

CLAUSE 6

THAT clause 6 of the Bill be deleted and substituted therefor the following new clause –

Amendment of
section 35 of Cap.
470.

6. Section 35 of the Income Tax Act is amended –

- (a) in subsection (1) by deleting paragraph (j);
- (b) in subsection (3) –
- (i) by inserting the words “subject to subsection (3A)” at the beginning thereof;
- (ii) by deleting paragraph (i);
- (iii) by inserting the following new paragraph immediately after paragraph (i) –
- (j) rent, premium or similar consideration for the use or occupation of immovable property;
- (c) by inserting the following new subsection immediately after subsection (3) -
- “3A. Notwithstanding the provisions of subsection (3), only a person appointed for that purpose by the Commissioner, in writing, shall deduct tax under paragraph (j) of that subsection.
- (d) by deleting subsection (6).

CLAUSE 14

THAT clause 14 of the Bill be amended –

- (a) by deleting paragraph (c) and substituting therefor the following new paragraph -

(c) in paragraph (2) by inserting the following new subparagraph immediately after paragraph (h)–

- (i) in the case of a company that constructed at least five hundred residential units annually, twenty percent for that year of income subject to approval by the Cabinet Secretary responsible for housing:

provided that where a company is engaged in multiple activities which include the ones specified in subparagraph (i), the rate of twenty percent shall be applied proportionately to the extent of the turnover arising from the housing activity.

- (b) by inserting the following new paragraph immediately after paragraph (d)–

(e) Head B of the Third Schedule to the Income Tax Act is amended—

(i) in paragraph 3 by deleting subparagraph (m);

(ii) in paragraph 5 by deleting subparagraph (j).

CLAUSE 21

THAT clause 21 of the Bill be amended —

(a) in paragraph (d) by inserting the words “excluding locally assembled motor vehicles” immediately after the words “motor vehicles”;

(b) by inserting the following new paragraph immediately after paragraph (d)—

“(da) by inserting the words “and locally assembled motor cycles” immediately after the words “motor cycles ambulances” appearing in item titled “Motor cycles of tariff 87.11 other than motor cycle ambulances”;

(c) by deleting paragraph (e);

(d) by inserting the following new paragraph after paragraph (e) —

“(f) by deleting the formula “ AxB ” in paragraph 2 (2) and substituting therefor with the formula “ $A(1+B)$ ”.

CLAUSE 22

THAT clause 22 of the Bill be deleted and substituted therefor the following new clause —

Amendment of the
Second Schedule to
No. 23 of 2015.

22. The Second Schedule to the Excise Duty Act, 2015 is amended —

(a) in Part A by inserting the following new paragraphs immediately after paragraph 8 —

“9. Excisable goods imported or purchased locally for direct and exclusive use in the implementation of an Official Aid-Funded Project, to the extent provided for under the financing agreement.

10. Excisable goods imported for direct use in the manufacture of sanitary towels.

11. Excisable goods to the national carrier and local airlines for both local and international supplies upon recommendation by the Cabinet Secretary responsible for transport.

12. Excisable kerosene for industrial use.

13. All goods including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and the National Police Service.

(b) in Part B by inserting the following new paragraph immediately after paragraph (1) (b) —

“(c) Excisable services supplied to the national carrier and local airlines for both local and international supplies upon approval by the Cabinet Secretary responsible for transport”.

CLAUSE 27

THAT clause 27 of the Bill be amended –

(a) in paragraph (a) -

(i) by deleting subparagraph (i) and substituting therefor the following subparagraph

–
(i) by inserting the tariff numbers 2302.10.00, 2302.30.00, 2303.30.00, 2304.00.00, 2306.10.00, 2306.20.00, 2306.30.00, 2306.41.00, 2306.49.00, 2306.50.00, 2306.60.00, 2306.90.00, 2835.25.00 and 2835.26.00 at the end of paragraph 43;

(ii) by deleting subparagraph (v) and substituting therefor the following new subparagraph–

(v) by deleting paragraph 57 and substituting therefor the following new paragraph–

57. All goods including material supplies, equipment, machinery and motor vehicles for official use by the Kenya Defence Forces and the National Police Service.

(iii) in subparagraph (vi) by inserting the following new paragraphs immediately after the proposed paragraph 65 -

“66. Taxable goods locally purchased or imported by manufacturers or importers of clean cook stoves for direct and exclusive use in the assembly, manufacture or repair of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to energy.

67. Inputs or raw materials locally purchased or imported by manufacturers of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for energy.

68. Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbeques, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, or iron or steel of tariff numbers

- 7321.11.00, 7321.12.00, 7321.19.00, 7321.81.00, 7321.82.00, 7321.83.00 and 7321.90.00.
69. Super absorbent polymer (SAP) of tariff number 39.06.90.0.
 70. Carrier tissue white, 1 ply 14.5 GSM of tariff number 4703.21.00.
 71. IP super soft fluff pulp – fr-fluff 310 treated pulp 488*125mm (cellose) of tariff number 4703.21.0.
 72. Perforated PE film 15-22 gsm of tariff number 3921.190.0.
 73. Spunbound non-woven 15-25 gsm of tariff number 56.03.1190.8.
 74. Airlid paper with super absorbent polymer 180gsm/67 of tariff number 48.03.00.0.
 75. Airlid paper with super absorbent polymer 80gsm/67 of tariff number 48.03.00.0.
 76. Airlid paper without super absorbent polymer 180gsm/67 of tariff number 48.03.00.0.
 77. Airlid paper without super absorbent polymer 80gsm/67 of tariff number 48.03.00.0.
 78. Pressure sensitive adhesive of tariff number 3506.91.90.
 79. Plain polythene film/LPDE of tariff number 39.21.190.0.
 80. Plain polythene film/PE of tariff number 39.21.190.0.
 81. PE white 25-40gsm/release paper of tariff number 48.44.51.10.0.
 82. ADL – 25-40gsm of tariff number 56.03.1190.8.
 83. Elasticized side tape of tariff number 5402.4410.
 84. 12-16 gsm spunbound piyropononwoven coverstock/12gsm spunbound PP non-woven SMS hydrophobic leg cuffs of tariff number 56.03.1190.8.
 85. Polymetric elastic 2/3 strands of tariff number 3919.90.90.10.
 86. Plain polythene film/PE of tariff number 39.20.10.10.
 87. PE white 25-40gsm/release paper of tariff number 48.10.99.00
 - 88.12-16 gsm spunbound piyropononwoven coverstock/15gsm spunbound PP non-woven SSMMS hydrophobic leg cuffs of tariff number 56.03.1190.
 89. Taxable supplies to the national carrier and local airlines for both local and international purchases upon recommendation by the Cabinet Secretary responsible for transport.

(b) in paragraph (b) –

- (i) by inserting the words “and national reserve” immediately after the word “parks” in the proposed paragraph 24 appearing in subparagraph (iii);
- (ii) of subparagraph (iv) –

(a) by deleting the proposed paragraph 25 and substituting therefor the following new paragraph –

“25. The brokerage services of tour operators, excluding in-house supplies”;
and

(b) by inserting the following new paragraph immediately after the proposed paragraph 27 -

“28. Taxable supplies to the national carrier and local airlines for both local and international purchases upon recommendation by the Cabinet Secretary responsible for transport”.

(c) by inserting the following new paragraph immediately after paragraph (b) -

(c) Section B of Part I of the First Schedule is amended by–

(i) renumbering the existing provision in section B of Part I as paragraph (1);

(ii) inserting the following new paragraph immediately after paragraph (1)–

(2) Notwithstanding paragraph (1), the exemption shall be extended by a further two years from 1st September, 2016.

CLAUSE 38

THAT clause 38 be amended in the proposed section 42A, by inserting the following new subsection immediately after subsection (4) –

(5) A person who, prior to the commencement of this section, was appointed to withhold tax under section 25A of the Value Added Tax Act, 2013 shall, notwithstanding the repeal of that section, be deemed to be a person appointed under subsection (1):

provided that this provision shall not be construed to impose any penalty whatsoever on any such person who ceased to withhold tax for any period following the repeal of that section upto the 8th June, 2016.

CLAUSE 39

THAT clause 39 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b) –

“(c) by inserting the following new subsection after subsection (4) –

(5) The Commissioner shall repay the overpaid tax within a period of two years from the date of application, failure which the amount due shall attract an interest of 1% per month or part thereof of such unpaid amount after the period of two years.

NEW CLAUSES

THAT the Bill be amended by inserting the following new clauses immediately after clause 39 –

Amendment of
section 48 of No.
29 of 2015.

39A. The Tax Procedures Act, 2015 is amended by deleting section 48 and substituting therefor the following new section –

Erroneous refund of
tax.

48 (1) Where any tax has been refunded in error, the person to whom the refund has been erroneously made shall, on demand by the Commissioner, pay the amount erroneously refunded.

(2) Where a demand has been made for any amount of tax under subsection (1), that amount shall be deemed to be due from the person liable to pay the tax on the date upon which the demand is served upon him or her and if payment is not made within thirty days of the date of service, an interest equal to 1% per month or part thereof of such unpaid amount shall forthwith be due and payable,

provided that the interest chargeable under this subsection shall not exceed one hundred percent of the tax originally due.

Amendment of
section 89 of No.
29 of 2015.

39B. Section 89 of the Tax Procedures Act, 2015 is amended –

(a) in subsection (6) by inserting the words “or interest” immediately after the word “penalty” wherever it appears;

(b) by deleting subsection (7) and substituting therefor with the following new subsection –

“(7) The Commissioner may, upon an application under subsection (6) or on the Commissioner’s own motion and with the approval of the Cabinet Secretary, remit, in whole or in part, any penalty or interest payable by a person except a penalty imposed under section 85,

Provided that the remission of interest is by reason of –

(a) uncertainty as to any question of law or fact;

(b) consideration of hardship or equity; or

(c) impossibility or undue difficulty or expense, of recovery of tax.

Amendment of the
Second Schedule to
No. 29 of 2015.

39C. The Second Schedule to the Tax Procedures Act, 2015 is amended –

(a) in paragraph 2 by deleting the words “section 51 A (a)” and substituting therefor the words “sections 35 (6B), 37 (6) and 51A (a)”;

(b) in paragraph 3 by deleting the words “section 56” and substituting therefor the words “sections 55 and 56”.

CLAUSE 45

THAT clause 45 of the Bill be amended –

- (a) in paragraph (a) by inserting the words “institutions registered under the Co-operative Societies Act, Cap. 490” immediately after the words “SACCO Societies Act, 2008”;
- (b) in paragraph (c) (i) by inserting the words “institutions registered under the Co-operative Societies Act, Cap. 490” immediately after the words “SACCO Societies Act, 2008”; and
- (c) in paragraph (c) (ii) by inserting the following new sub-subparagraph immediately after subparagraph (da) –

“(daa) institutions registered under the Co-operative Societies Act, Cap. 490”.

CLAUSE 46

THAT clause 46 of the Bill be deleted.

CLAUSE 48

THAT clause 48 of the Bill be deleted.

CLAUSE 51

THAT clause 51 of the Bill be deleted.

NEW CLAUSES

THAT the Bill be amended by inserting the following new clauses immediately after clause 59–

Amendment of
section 2 of
Cap. 485A.

60. Section 2 of the Capital Markets Act, is amended–

- (a) by inserting the following new definitions in their proper alphabetical sequence–

“commodity” means–

- (a) agricultural, livestock, fishery, forestry, mining or energy goods or any product that is manufactured or processed from any such goods;
- (b) financial instruments;
- (c) an index, right, or interest in any such commodity;
- (d) such other thing as the Cabinet Secretary may, by notice in the *Gazette*, determine to be the subject of a commodity contract;

“commodity contract” includes–

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT
(FOURTH SESSION)

PUBLIC PETITION BY CONCERNED PARENTS ON WAIVER OF TAXES
FOR RAW MATERIALS USED IN MANUFACTURING OF SANITARY
TOWELS

I, the undersigned, on behalf of citizens of Kenya and in particular, concerned parents,

DRAW the attention of the House to the following:-

- i. THAT, Kenya, as the most developed economy in East and Central Africa, has a manufacturing industry which is largely characterized by the export of raw materials and import of goods which have already been value-added;
- ii. THAT, the Government has exempted the supply or importation of sanitary towels and tampons;
- iii. THAT, this gives importers of sanitary products an upper hand in the industry, while also bringing about tax inequity as manufactures who have to incur input VAT and duty upon importation of raw materials for production face higher tax implications than those importing finished products;
- iv. THAT, these extra costs and possible losses incurred by the manufacturers may lead them to opt to import or relocate their manufacturing plants to more favourable business environments;
- v. THAT, due to this tax imbalance, various multinationals like Johnson & Johnson, Proctor and Gamble, Eveready East Africa, Cadbury Kenya, Palmolive, among many others, have moved to other countries in the region like Uganda and Egypt, which have better tax regimes;

Approved,
BWA
SNA
17/02/16

Hon. Speaker
Please approve
for issuance of
17/2/16. - J. S.
17/2.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

101
102

103
104

PUBLIC PETITION BY CONCERNED PARENTS ON WAIVER OF TAXES FOR RAW MATERIALS USED IN MANUFACTURING OF SANITARY TOWELS

- vi. **THAT**, this has led to loss of revenues for the government and jobs for locals in the country;
- vii. **NOTING THAT**, the supply of sanitary towels promotes education, productivity, hygiene and a self-health environment for the girl child, which ultimately boosts economic development in the country, and is in line with Government initiatives to promote girl child education;
- viii. **THAT**, the matter in respect of which this petition is made is not pending before a Court of Law.

THEREFORE your humble petitioners pray that the National Assembly, through the Departmental Committee on Finance, Planning and Trade:-

- i. Intervenes to ensure that Parliament exempts, in law or administratively, the VAT and Custom Duties on raw materials, specifically for the manufacture of sanitary pads in the 2016/2017 financial year;
- ii. Urges the Government to exempt the supply of sanitary pads in Kenya to reduce the cost of the final product; and
- iii. Ensures that the VAT exemption is implemented not only from the 2016/2017 financial year, but also in future years, for the continued prosperity of girl child education in the country.

And your **PETITIONERS** will ever pray.

PRESENTED BY,



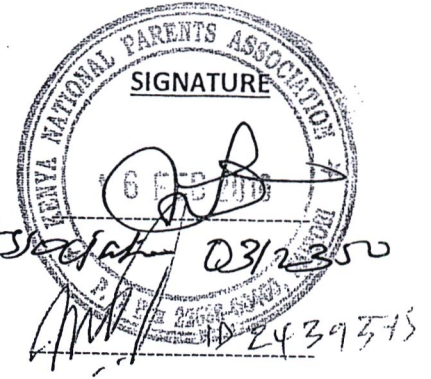
HON. STEPHEN MUTINDA MULE, M.P.
MATUNGULU CONSTITUENCY

DATE: 17th Feb 2016

NAME

DESIGNATION

1. MR MUSAU NDUNDA *SECRETARY GENERAL*
CHAIRMAN Parent Teachers Association of Kenya
KENYA NATIONAL PARENTS ASSOCIATION
2. DR S.K ARIMI DIRECTOR –Medipharm East Africa Limited



CONSUMERS

NAME	I.D NUMBERS	SIGNATURE
1) Hellen Wangui Mithamo	21706319	<i>[Signature]</i>
2) Karen Nkatha Gitonga	29268586	<i>[Signature]</i>
3) Lilian Nkatha Kinoti	7725965	<i>[Signature]</i>
4) Martha Mwikali	28318402	<i>Martha</i>
5) Susan Wanjiku Gathaiya	24151401	<i>[Signature]</i>
6) Grace Thogori Gathinji	20374268	<i>[Signature]</i>
7) Doris Karimi Kaburu	11258123	<i>[Signature]</i>
8) Lilian Karimi	21954590	<i>[Signature]</i>
9) Pauline Gakii Kinanu	24478550	<i>[Signature]</i>
10) Anne Muthoni Kariuki	13058502	<i>[Signature]</i>

CC.

- 1. SPEAKER-Budget
- 2. SPEAKER-National Assembly
- 3. Budget Committee
- 4. Health Committee
- 5. Educational Committee
- 6. Ministry of Education-Science and Technology
- 7. Cabinet Secretary-MOE

