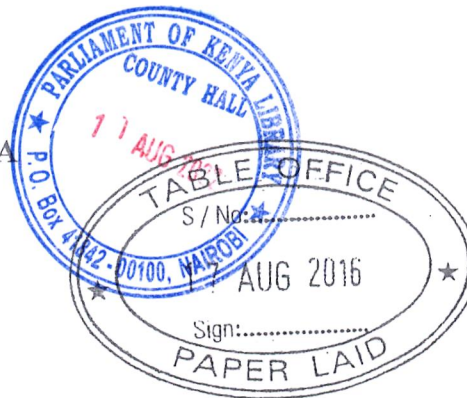


REPUBLIC OF KENYA



NATIONAL ASSEMBLY

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ELEVENTH PARLIAMENT – FOURTH SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

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REPORT ON THE FINANCE BILL, 2016

CLERKS CHAMBERS  
DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

AUGUST, 2016

## TABLE OF CONTENTS

ABBREVIATIONS.....	- 4 -
CHAIRPERSON'S FOREWORD .....	- 5 -
EXECUTIVE SUMMARY .....	- 6 -
1.1. MANDATE OF THE COMMITTEE .....	- 7 -
1.2. COMMITTEE MEMBERSHIP .....	- 8 -
1.3. COMMITTEE SECRETARIAT .....	- 9 -
1.4. CONSIDERATION OF THE BILL.....	- 9 -
1.4.1. Income Tax Act.....	- 9 -
1.4.2. Excise Duty Act.....	- 10 -
1.4.3. Value Added Tax Act.....	- 10 -
1.4.4. Tax Procedures Act .....	- 11 -
1.4.5. Financial Sector Statutes .....	- 11 -
1.5. Kenya Oil and Gas Association (KOGA) .....	13
1.6. RSM (Eastern Africa) Consulting Ltd.....	13
1.7. Institute of Certified Public Accountants of Kenya (ICPAK).....	14
1.8. PricewaterHouseCoopers (PWC) .....	15
1.9. Kenya Association of Manufacturers (KAM) .....	16
1.10. Kenya Airways .....	17
1.11. Anjarwalla & Khanna.....	18
1.12. British American Tobacco.....	18
1.13. Nairobi Securities Exchange .....	19
1.14. Federation of Kenya Pharmaceuticals Manufacturers.....	19
1.15. Clean Cookstoves Association of Kenya .....	19
1.16. Kenya Union of Savings & Credit Cooperatives .....	19
2.0. BACKGROUND INFORMATION.....	20
3.0. ANALYSIS OF THE CLAUSES OF THE FINANCE BILL, 2016.....	20
3.1. AMENDMENTS TO THE INCOME TAX ACT, 2013 .....	20
3.2. AMENDMENTS TO THE EXCISE DUTY ACT.....	23
3.3. AMENDMENTS TO THE VALUE ADDED TAX ACT .....	24
3.4. AMENDMENTS TO THE TAX PROCEDURES ACT.....	25

3.5.	MISCELLANEOUS AMENDMENTS .....	27
	Clause 40: Retirement Benefits Act .....	27
	Clause 41: Kenya Revenue Authority Act .....	27
	Clauses 42 - 44: Capital Markets Act.....	27
	Clauses 45 - 48: Banking Act.....	27
	Clause 49: Alcoholic Drinks Control Act .....	28
	Clauses 50 – 51: Kenya Deposit Insurance Act .....	28
	Clause 52: Public Finance Management Act.....	29
	Clauses 53 – 58: Tax Appeals Tribunal Act.....	29
	Clause 59: Special Economic Zones Act.....	29
4.0.	STAKEHOLDERS VIEWS ON THE FINANCE BILL, 2016 .....	29
4.1.	Kenya Oil and Gas Association (KOGA) .....	29
4.2.	Pricewater House Coopers (PWC).....	34
4.3.	Institute of Certified Public Accountants of Kenya (ICPAK).....	36
4.4.	Kenya Association of Manufacturers .....	39
4.5.	British American Tobacco.....	41
4.6.	Anjarwalla & Khanna.....	42
4.7.	Kenya Airways.....	43
4.8.	Federation of Kenya Pharmaceuticals Manufacturers.....	43
4.9.	RSM (Eastern African) Consulting Ltd.....	44
4.10.	Clean Cook stoves Association of Kenya (CCAK).....	45
4.11.	Kenya Union of Savings & Credit Cooperatives Ltd .....	46
4.12.	Nairobi Securities Exchange .....	46
5.0.	COMMITTEE RECOMMENDATION .....	48
	ANNEXES .....	49
	ANNEX 1: CONSOLIDATED AMMENDMENTS FROM THE STAKEHOLDERS .....	49
	ANNEX 2: MINUTES .....	49



## ABBREVIATIONS

CGT	-	Capital Gains Tax
EAC	-	East African Community
ICPAK	-	Institute of Certified Public Accountants of Kenya
ITA	-	Income Tax Act
KAM	-	Kenya Association of Manufacturers
KEPSA	-	Kenya Private Sector Alliance
KOGA	-	Kenya Oil and Gas Association
KRA	-	Kenya Revenue Authority
NSE	-	Nairobi Securities Exchange
VAT	-	Value Added Tax
O&G	-	Oil and Gas
WHT	-	Withholding Tax
EACCMA	-	East African Community Customs Management Act

## **CHAIRPERSON'S FOREWORD**

This report contains the Committee's proceedings of the consideration of the Finance Bill, 2016 which was committed to the Committee on 16<sup>th</sup> June, 2016 pursuant to Standing Order 127. On analysis of the Bill, the Committee observed that despite the growth and strong macroeconomic stability attained by the economy in the recent past, a lot remains to be done in order to decisively deal with the challenges of unemployment, poverty, inequality, low tourism and the impact of a weak global economy among others.

The tax measures and other proposed amendments contained in this Bill are aimed at addressing the challenges, achieving an inclusive economic growth, reducing cost of doing business, enhancing job creation as well as improving the welfare of Kenyans in addition to fostering growth and stability in the financial sector.

On behalf of the Departmental Committee on Finance, Planning & Trade and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Finance Bill, 2016.

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 all the stakeholders for their participation in scrutinizing the Bill.

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

**HON. BENJAMIN LANGAT, MP**

## EXECUTIVE SUMMARY

The Finance Bill, 2016 is one of the annual Bills introduced in the National Assembly Pursuant to section 40 of the Public Finance Management Act, 2012. Its main objective is to set out the revenue raising measures for the national government together with a policy document expounding on those measures. Ideally, it proposes amendments to a variety of laws relating to various taxes and duties as well as other financial sector statutes.

Section 41 of the Public Finance Management Act, 2012 obligates the National Assembly to process and pass the Finance Bill within 90 days of passing the appropriation Bill. The Finance Bill, 2016 was introduced in the National by the Chairman of the Departmental Committee on Finance, Planning & Trade on 16<sup>th</sup> June, 2016 and therefore committed to the Departmental Committee on Finance, Planning & Trade for consideration in line with Articles 114 and 118 of the Constitution and Standing Order 127. The Committee engaged a number of stakeholders whose views are contained in this report.

The Finance Bill, 2016 contains a total of 59 clauses which propose amendments to the four (4) main tax laws namely, Income Tax Act, Excise Duty Act, Value Added Tax Act; Tax Procedures Act as well as other miscellaneous amendments in a total of nine (9) financial sector statutes, which are, Retirement Benefits Act, Kenya Revenue Authority Act, Capital Markets Act, Banking Act, Alcoholic Drinks Control Act, Kenya Deposit Insurance Act, Public Finance Management Act, Tax Appeals Tribunal Act and Special Economic Zones Act.

The proposed amendments to the Income Tax, Excise Duty, VAT, Tax Procedures Acts are deemed to have come into operation on 9<sup>th</sup> June, 2016 and 1<sup>st</sup> July, 2016; with a few such as the ones relating to assessment of taxes, penalties or interests in some cases and VAT withholding agent being backdated to 19<sup>th</sup> January, 2016. The rest on miscellaneous amendments will become effective on 1<sup>st</sup> January, 2017.

## 1.1. 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.

## 1.2. COMMITTEE MEMBERSHIP

<b>Chairperson</b>	The Hon. Benjamin Langat, MP
<b>Vice Chairperson</b>	The Hon. Nelson Gaichuhie, MP
<b>Members</b>	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



### 1.3. 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

### 1.4. CONSIDERATION OF THE BILL

The Finance Bill, 2016 was published on 8<sup>th</sup> June, 2016 and read a first time on 16<sup>th</sup> June, 2016 and thereafter committed to the Departmental Committee on Finance, Planning & Trade for consideration pursuant to Standing Order 127. The Finance Bill, 2016 proposes amend the following financial sector laws:

#### 1.4.1. Income Tax Act

**Clauses 2 – 16**, propose amendments to the **Income Tax Act** in the following parts:-

- The introduction of a taxable minimum threshold of the Residential Rental Income Tax (RRIT) at Kshs. 144,000 per annum (Kshs. 12,000 per month) and also reducing the applicable rate from 12% to 10%. This is after the Finance Act, 2015 introduced this type of tax for residential rental income not exceeding Kshs. 10 million annually – *clause 3*.
- Empowerment of the Commissioner to appoint withholding agents for Residential Rental Income Tax – *clause 6*.
- Repealing of various sections of the principal Act in a bid to re-align it to the provisions of the Tax Procedures Act – *clauses 7 - 11*
- The section that provides for income tax refund is repealed so that the provision in the Tax Procedures Act to be used. However, whereas the Section proposed to be repealed provided for a period of 7 years within which tax refund can be claimed, and interest accrual thereof, it is noted that the provision in the Tax Procedures contains a period of 5 year with no mention of interest.
- Tax exemption for bonuses, overtime and retirement benefits for employees whose taxable employment before such is below the lowest tax band. Also, proposed for exemption is the interest income on bonds issued by the East African Development Bank (EABD) – *clause 13*
- Personal relief is proposed to be enhanced by 10% from the current Kshs. 13,944 per annum to Kshs. 15,360 per annum. This translates to Kshs. 118 per month. In addition, the Pay-As-You-Earn (PAYE) banding has been shifted upwards from the lowest band of

Kshs. 121,968 to the proposed Kshs. 134,164 per annum at 10% (Kshs. 10,164 to Kshs. 11,180.3 per month). The highest band to move from Kshs. 466,704 to Kshs. 513,373 per annum at 30% (Kshs. 38,892 to Kshs. 42,781) – *clause 14(a and b)*

- Corporate Income proposed to be reduced from 30% to 20% to incentivize companies that construct at least 1,000 residential units annually.

#### **1.4.2. Excise Duty Act**

**Clauses 17 – 22**, proposes amendments to the **Excise Duty Act** and some of the main thrust in this part include:

- i. Imposition of a duty of Kshs. 7.20 per litre of kerosene – *clause 21(a)*
- ii. Introduction of duty on cosmetics and beauty products at the ad valorem rate of 10% - *clause 21(b)*
- iii. Water is excluded from excise duty – *clause 21(c)*
- iv. The specific excise duty on vehicles of Kshs. 200,000 (older than three years) and Kshs. 150,000 (bellow three years old) is proposed to be replaced with ad valorem rate of 20% - *clause 21(d)*
- v. Exempted goods include excisable goods purchased locally for direct and exclusive use in the implementation of official Aid Funded Project (to the extent provided in the financing contract)

#### **1.4.3. Value Added Tax Act**

**Clauses 23 – 28**, proposes amendments to the **Value Added Tax Act** and some of the key issues in this parts include:-

1. In the Exemption regime, taxable goods, services and items introduced in clauses 24 – 27 are such as:-
  - Service charge in lieu of tips (not exceeding 10% of the service).
  - Raw material for animal feed.
  - Vehicles for official Aid Funded Projects.
  - Equipment and machinery imported or purchased locally for use by KDF, NPS and military supplies.
  - Liquefied petroleum gas
  - Wheat seeds
  - Garments and leather footwear manufactured at the Export Processing Zone
  - Some equipment for the Museums
  - Goods for direct and exclusive construction of specialized hospital with accommodation facilities.

- Park entry fees
  - Service with respect to tour operators and construction of specialized hospital with accommodation
2. In the Zero rated regime, taxable goods and items in clause 28 include
- Supply of taxable goods and services to a special economic zone (SEZ) enterprise.
  - Medicaments containing anti-biotics.

#### 1.4.4. Tax Procedures Act

**Clauses 29 – 39**, proposes amendments to the **Tax Procedures Act** and issues in this part include:

- i) Appointment of tax representatives for non-residents (either by the non-resident persons themselves or the Commissioner) – *clause 30*
- ii) Empowerment of Kenya Revenue Authority (KRA) to seek auxiliary information with the aim of pre-populating the I Tax system – *clause 34*
- iii) Introduction of tax amnesty for owners of assets and businesses outside Kenya who may wish to re-invest back into the country – *clause 36*
- iv) Provision for appointment and revocation of the Value Added Tax (VAT) withholding agents – *clause 38*
- v) Tax refund period is proposed to be increased from 1 year to 5 years except for VAT – *clause 39*

#### 1.4.5. Financial Sector Statutes

**Clauses 40 – 59**, proposes amendments to some **financial sector statutes**. The main issues in this part include:

- i) Amendment to **Retirement Benefits Act** so as to allow non-renewable perpetual license to institutions licensed by the Authority – *clause 40*
- ii) Amendment to the **Capital Markets Act** to provide for online forex trading – *clause 42*
- iii) Amendment to the **Banking Act** – *clauses 45 to 48*
  - Incorporation of SACCOs and utility companies in the Credit Information Sharing framework to facilitate cross border sharing of credit information
  - The Central Bank of Kenya to consult the Cabinet Secretary on matters receivership
  - Penalty for contravening prudential guidelines and financial laws to be enhanced from Kshs. 5 million to Kshs. 20 million
  - Minimum Core Capital Requirement for banks and mortgage institutions proposed to be increased to Kshs. 2 billion by December, 2017; Kshs. 3.5 billion by December, 2018 and Kshs. 5 billion by December, 2019.

- iv) Amendment to **Kenya Deposit Insurance Act** to provide for the Central Bank of Kenya to consult the Cabinet Secretary on appointment of the Kenya Deposit Insurance Corporation as a receiver – *clause 51*
- v) Amendment to the **Special Economic Zone Act** to remove blanket tax exemption and replace it with specific tax incentives as shall be specified in the respective tax laws – *clause 59*

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on Friday 1<sup>st</sup> July, 2016 pursuant to Article 118 of the Constitution. The Committee met officers from the National Treasury and several Stakeholders whose views are captured and contained in the body of the report.

### **1.5. Kenya Oil and Gas Association (KOGA)**

The Kenya Oil and Gas Association (KOGA) submitted that following the changes to the VAT legislation, the Oil and Gas industry will suffer VAT on services at 16% because exemption applies to goods only. More than 80% of the cost base is made of services and this will increase the cost of Oil and Gas activities in the Country by 13% compared to other regional countries like Uganda, Tanzania and Mozambique where there are no VAT costs to Oil and Gas Companies hence propose that the VAT chargeable on services to Oil and Gas companies be removed.

Disposals of Oil and Gas shares and other assets are subject to tax at 30% /37.5% as compared to other industries at 5%. The Transactions in the Oil and Gas industry are key to accessing further capital, technologies and expertise as well as sharing risks and currently there are no incentives for companies to reinvest proceeds from disposals into additional Oil and Gas activities in the country.

There is inequality in the industry hence this could make the country lose investment to the regional countries that have preferential regimes. The government need to incentivize investors to invest in the country. Therefore the industry proposes reinvestment relief to be introduced in the country and for parity with the other industries to the rate of tax applicable (i.e. 5% and other provisions relating to share disposal.

### **1.6. RSM (Eastern Africa) Consulting Ltd**

RSM (Eastern Africa) Consulting Limited submitted three proposals to amend the Value Added Tax Act and the Income Tax Act. The proposals will positively impact on farming, real estate and mining sectors.

The government aims at exempting from VAT, the major raw materials used to manufacture animal feeds however, two critical materials are not listed. Brewing or distilling dregs and similar wastes and residues resulting from extraction of oil from soya beans are also major and critical raw materials. This will reduce the prices and improve the quality of the animal feeds

The government has only provided capital allowances on buildings which are used for manufacturer, agriculture, hotel transportation, hotel, hostels or residential buildings in a planned development area approved by the Cabinet Secretary or commercial buildings where social infrastructure is provided. There is no provision for other residential or buildings yet they are major investments and government aims to generate significant revenue from the same. This position discourages investors setting up such buildings.

A fair tax policy should grant reasonable capital allowances for investments which generate taxable income. They propose a 5% for residential and commercial buildings which don't enjoy other capital allowances. By this proposal taxation of the mining sector and the upstream oil and gas sector will be aligned. This will ensure uniformity and fairness in the treatment of the two sectors which are similar in nature and operations. The mining sector has a big potential to spur economic growth, develop capacity of the local firms to undertake sophisticated jobs and create employment.

### **1.7. Institute of Certified Public Accountants of Kenya (ICPAK)**

The Institute of Certified Public Accountant of Kenya (ICPAK) submitted that with the administrative requirement to pay tax and file returns on I- Tax it has become unclear whether certain provisions are useful like Section 54 that provides requirement to provide audited accounts and Paragraph 11 of the income tax (Withholding Tax) Rules, 2001 which has requirement to submit annual withholding tax return. There should be certainty on tax compliance.

The pension thresholds have not been increased for the last 5-6 years and by increasing the pension thresholds it will mobilize savings for infrastructure development and also ensure that the aging population will have sufficient funds at retirement. The proposal is to increase tax deductible threshold for contributions to three hundred and sixty thousand.

On the Tax Procedure Act especially on Voluntary Disclosure Programme the objective if the VDP is to encourage taxpayers who have made errors in their tax matters due to ignorance or negligence and without willful intent to evade taxes to come forward and inform the revenue authority on voluntary bases. They propose introduction of voluntary disclosure programme to be designated in such a way that the Kenya Revenue Authority (KRA) is in a position to accord penalty treatment for first time voluntary disclosure and this will encourage taxpayers to come forward and declare the tax liabilities.

Section 89 (6) allows the application to the Commissioner for waiver of penalty but excludes remission of interest hence proposal to amend the Section to provide for remission of interest. This will give the Commissioner discretion in case of difficulty of collection of interest.

Section 46 on the Transferred tax liabilities indicates that where a transferor, who has a tax liability transfers all/some of the assets of the business to a related person (transferee), the transferee shall be liable for the tax liability (transferred liability).ICPAK proposes amendment to enhance equality.

Section 48 on erroneous refund of tax and subsection (1) imposes late payment interest from the date the refund was erroneously paid in addition to tax paid in error. This is punitive and the Commissioner in some cases will audit the refund before funds are released and as such the consequences of the error should not be borne by the tax payer. There should be fairness on the refunds.

According to the Schedule 8 paragraph 13 exemptions from the CGT is considered for group undertaking restructuring and should be in public interest. The growing complexity of business structures attracts inward and outward investments restructuring. The aim of CGT is to tax realized gains on sale, the Eighth Schedule therefore needs to be amended to allow for internal reorganization where the ultimate ownership of the group does not change. For consistent application, the exemption should mirror the provisions of Section 96 of the Stamp Duty Act, which exempts transfers between associated companies from stamp duty. This will promote consistency with the Stamp Duty Act.

Compensating tax was introduced to act as a safeguard against companies making perpetual losses and still distribute dividends but there have been attempts to amend Section 7A of the Income Tax Act dealing with dividend Tax Account and Compensating Tax. This means that where a company as

opposed to an individual sells capital asset and pays capital gain tax at a rate of 5% it will still be required to pay an additional 25% compensating tax when it declares such a gain as a dividend. To avoid double taxation of capital gains on distribution of dividends there is need to amend Section 7A (7) and 7A (3) (e).

### **1.8. PricewaterHouseCoopers (PWC)**

The PWC submitted that Section 41(5) – (7) of the Income Tax Act on the Limitations of Benefits (“LoB”) provisions, are aimed at curbing treaty shopping, have made it difficult for legitimate businesses to access Kenya’s tax treaty network except in a very narrow range of circumstances. Currently, the LoB provisions only allow treaty benefits when 50% or more of the underlying ownership of the party to the transaction is held by individuals who are resident in treaty country or when the other party to the transaction is listed in a stock exchange in the country. PWC proposes deletion of the Sections 41(5) – (7) of the ITA and replace them with provisions based on ‘beneficial ownership of income’ provision.

On re-instatement of withholding VAT under Section 42A of the Tax Procedure Act, the Finance Bill, 2016 through Clause 38, has re-instated the withholding VAT system which continues to pose the following challenges:-

- The Systems’ disregard of transaction volume
- Tax payers not being entitled to tax refunds arising from withheld VAT
- The cost of modifying enterprise resource planning systems \
- The lack of distinction between complaint and non-compliant tax payers
- Late remittance of withheld VAT

PWC proposes to amendment Section 42A of the Tax procedure Act, 2015 to align it with the best International practices. They further submitted that Kenya ought to emulate international best practices similar to more developed VAT regimes for example the United Kingdom, Australia, South Africa and other members of the East African Community ( EAC) which do not have Withholding VAT systems yet they operate efficient VAT systems.

The passage of the VAT Act, 2013 removed books and related learning materials from the Zero rate schedule and thus made them taxable for VAT purposes at the rate of 16%. This resulted in an increase the cost of books and other learning materials. The increased price of these materials had led to decreased affordability and such a decrease in demand for books and other learning materials; further resulting in a hampering of government’s effort to increase the quality of education. In addition this has negatively affected the growth of Kenya’s publishing, books selling and related industries. Therefore they propose an amendment of the Second Schedule of the VAT Act, 2013 to provide zero rating of the educational related materials. This will be in line with the vision 2030.

The repealed VAT Act, Cap 476, granted VAT remission (0% VAT on taxable goods and services supplied to O &G companies. This is still currently applicable to most O& G companies given that the five year transition period with respect to VAT remission on taxable goods and services that were granted under the VAT Act, 2013. The remission scheme, did not address the impact on the O& G subcontractors most of whom are in a significant VAT refund position given that they provide services exclusively to O & G companies. The cost of financing the amounts awaiting refund which can take up to 3 years to be paid has to be factored in the contract price which increases the cost of exploration and development.

The remission scheme expires with effect from September 2018 and supplies by O & G subcontractors for services will be subject to VAT at 16%. Although this will address the VAT refund challenges of the subcontractors, it will effectively increase the cost of investment of O& G companies as services account for more than 80% of the sectors cost during the exploration and development phase. The Oil & Gas companies are also not making any supplies and therefore do not have the ability to pass the VAT cost to the final consumer. Therefore proposes an amendment of the Second Schedule of the VAT Act 2013.

In relation to Tourism and Hospitality on the proposed exclusion of service charge from VAT will help to increase the take home disposable income for the lower level of employees in the hospitality industry, hence boosting their morale. This will also help Kenya to retain its image as the favourable tourism destination due to competitive hotel prices. PWC therefore recommends that the proposal be retained.

#### **1.9. Kenya Association of Manufacturers (KAM)**

Kenya Association of Manufacturers submitted that the magnitude of the excise increase in December 2015 has resulted in an unprecedented excise shock; since the excise driven price increases, volumes have significantly reduced and it is not clear how much further they will decline driven by inflation adjustments. In order to allow for the industry and Government to absorb and understand the impact of these changes on the market performance and Government revenue, we propose that the powers of the Commissioner General to adjust for inflation be deleted.

Excise stamps are a cost to the manufacture or exporter and therefore would add to the cost of export yet exports are not supposed to attract tax or levies in general and the increases in excise tax is likely to increase business informality against government objective to formalize the economy.

The Impact of an increase in Excise duty on Non- alcoholic drinks are generally price elastic (with an increase in price, consumption reduces by more than the level of price rise) this therefore requires manufacturers to reduce their margins significantly so as to take up the additional cost in order to maintain sales and market share in the environment of reduced demand. In light of this, an increase in the excise duty result into reduced profits, government revenues.

With the proposed amendment, the cost of producing the plastic products will significantly increase. This will essentially cause a ripple effect on the cost of goods and products consumed by the general public.



The Act increases the rates of excise tax on beer, spirituous alcohol and wine by 43%, 46% and 88% respectively. This will lead to an increase in consumer prices and force them to shift to cheaper, unregulated and untaxed alcohol which has serious health burden implications;

When tax is to be applied to electronic cigarettes, it should be specifically levied on the quantity of e-liquid sold as opposed to the device used as the delivery system.

The motor cycle sector is a fairly new and growing industry, and the additional duty burden of Kshs. 10,000 will have a negative impact on its growth, the price of a motor cycle, kshs. 10,000 is a huge increase to the unit cost. This will either be absorbed by the producers significantly reducing their profits or by the consumers-who are low end earners e.g. boda boda riders. This will definitely reduce the number of sales of locally produced motor cycles and in turn a collapse of the industry;

Motorcycle Assemblers contend that imposition of an excise duty of 10,000 per unit of the motorcycle makes it expensive for local customers and should be removed. Instead the NTSA Motorcycle Operation Regulations 2015 should be implemented to improve motorists' road safety.

Kerosene is a raw material in paints and resins manufacturing the industry. Kerosene comprises 40% in Alkyd resins. Kerosene is also an input product in shoe polish manufacturing, therefore, for industrial use should be exempted from excise duty and there should be introduced regulations to govern the consumers of kerosene, their registration and certification.

VAT exemption should not be restricted to only a few types of brans. There should be inclusion of 16% VAT on raw materials used for manufacture of animal feed i.e. 2302.20.00 (rice bran) and 2302.40.00 (bran from other cereals).

By zero rating officially donor funded projects, the input VAT of suppliers to large officially funded infrastructure projects, would not be restricted. This eliminates the increase in cost to those suppliers that could in fact be passed on to the project contractor in full or in part.

In view of the rising costs of housing as well as steep rise in interest rates, the allowance of sh. 150,000 is not sufficient. The increase will assist several wage earners (middle class and upper middle class) to invest in housing for own occupation;

There is need for the creation of a central collection of monies collected by County Governments from the issuance of Single Business Permits (SBP).

#### **1.10. Kenya Airways**

Kenya Airways submitted that aircrafts parts and accessories are generally exempted from duties under the Firth schedule to East African Community Customs Management Act (EACCMA). The intention of the law was to exempt airlines from custom duty on aircraft related imports. The VAT 2013 has specifically exempted aircrafts spares from VAT under various tariff codes under part 1 of First Schedule to the VAT Act.

Kenya Airways pays import duty and VAT on some aircraft related parts. According to KRA the items are specifically included in the EACCMA and VAT 2013. The spares are approved by the Kenya Civil Aviation Authority (KCAA) for use by aviation industry. Kenya has no capacity to manufacture aircrafts spares hence all supplies are imported from abroad.

In a month Kenya Airways spend in excess of Kshs 100 Million on aircraft related imports. The company is experiencing cash flow challenges and has to borrow in order to pay taxes. It also claims refund of VAT from KRA, but the process is lengthy which leaves no economic benefit in paying taxes and then claiming the refund from the same tax authority. The government too does not lose out on any tax revenue but KQ has been undergoing cash flow challenges in financing the tax payments. Therefore proposes amendment of the tax laws to exempt taxable supplies to the National Carrier for both local and international purchases upon approval by the competent authority.

#### **1.11. Anjarwalla & Khanna**

Anjarwalla & Khanna submitted on Capital Gains tax that currently a transfer of property that is undertaken as a result of a corporate restructuring such as amalgamation is exempt from CGT if undertaken in the public interest with the approval of the Cabinet Secretary which is impractical for most entities. The Corporate re-organizations which do not involve a transfer of assets outside the group do not involve loss of revenue to the government as they do not involve a cash consideration.

The internal group company reorganizations are exempt from stamp duty under sections 95 and 96 of the Stamp Duty Act; and a CGT exemption would conform to international best practice and the Companies Act, 2015 which allows for sophisticated modes of corporate restructuring such as share buy backs.

Most developments take between 2-3 years to complete. The corporate tax rate is applicable on an annual basis for a development in excess of 1000 residential units and thus the need for clarity on when the real estate agents would start to benefit is important.

On taxation regime in betting, gaming and lotteries industry, currently a withholding tax certificate is generated by the bookmaker for each winning, which presents administrative difficulties. They propose that the bookmaker is allowed to file one withholding tax return aggregating all the tax deducted in the particular month to which the withholding tax payment relates.

The Betting, Lotteries and Gaming Act, Cap. 131 has different definitions for betting, gaming and lottery. Winning paid by a bookmaker to a punter to which 7.5% WHT is applicable could also fall within the definition of betting to which 20% WHT is applicable.

#### **1.12. British American Tobacco**

The British American Tobacco submitted that the single tier excise regime through the Excise Duty Act 2015 was a step in the right direction. The change of excise regime on cigarettes had been long overdue and this regime is in line with the best practice on taxation of cigarettes where all cigarettes are taxed at the same rate in a transparent, predictable and easy to administer manner. In addition, the single tier

specific system is in line with the governments overall public health objectives. The BAT wishes that the single tier specific excise on cigarette is maintained for it will promote government revenue sustainability and tax efficiency from our industry.

### **1.13. Nairobi Securities Exchange**

Nairobi Security exchange submitted that there was need promote the national savings and investment culture and to develop the co-operative movement in the country. It was also important to support the Kenya Green Economy Strategy and enable Government to efficiently deploy budgetary resources through the Social Impact Bond, also known as a Pay for Success Bond or a Social Benefit Bond which is a contract with the public sector in which a commitment is made to pay for improved social outcomes that result in public sector savings; and the Green Bonds enable capital-raising and investment for new and existing projects with environmental benefits.

It was timely to amend the retirement benefit Act to avail affordable housing to all Kenyans and long-term funds to solve working capital challenges in Small and Medium-sized Enterprises (SMEs)

Trade repositories are entities that maintain a centralized electronic record (database) of OTC derivatives transaction data and by centralizing the collection, storage and dissemination of data, TRs can play an important role in providing information that supports risk reduction, operational efficiency and cost savings for both individual entities and the market as a whole.

### **1.14. Federation of Kenya Pharmaceuticals Manufacturers**

The federation is content with the passage of the VAT Act, 2013 as it has resulted in savings by local manufacturers of pharmaceutical products which have been passed to the consumers.

### **1.15. Clean Cookstoves Association of Kenya**

Clean Cookstoves Association of Kenya Submitted that exemption of cook stoves that meet ISO/IWA 11:2012 Tier 2-4 emissions and fuel efficiency, components or parts that are imported to assemble, manufacture or repair cook stoves and the raw materials from VAT will go a long way in reducing the transition costs of consumers from the traditional methods of cooking using improved methods. This will also provide an easier entry point for last miles suppliers to fill in the gap for the rising demands as well as generate revenue for the government across the value chain. It will also work as an incentive for turning the informal artisanal sector into formal sector.

### **1.16. Kenya Union of Savings & Credit Cooperatives**

Kenya Union Savings & Credit Cooperatives submitted that all SACCOs including those that are not registered under the SACCOs Societies Act, 2008 engage in providing financial services. They too need to participate in credit information sharing.

## **2.0. BACKGROUND INFORMATION**

The Finance Bill, 2016 is one of the annual Bills introduced in the National Assembly Pursuant to Section 40 of the Public Finance Management Act, 2012. Its main objective is to set out the revenue raising measures for the national government together with a policy document expounding on those measures. Ideally, it proposes amendments to a variety of laws relating to various taxes and duties as well as other financial sector statutes.

Section 41 of the Public Finance Management Act, 2012 obligates the National Assembly to process and pass the Finance Bill within 90 days of its introduction in Parliament. The Finance Bill, 2016 was introduced in the National by the Chairman of the Departmental Committee on Finance, Planning & Trade on 16<sup>th</sup> June, 2016 and therefore committed to the Departmental Committee on Finance, Planning & Trade for consideration in line with Articles 114 and 118 of the Constitution and Standing Order 127. The Committee engaged a number of stakeholders whose views are contained in this report.

## **3.0. ANALYSIS OF THE CLAUSES OF THE FINANCE BILL, 2016**

### **3.1. AMENDMENTS TO THE INCOME TAX ACT, 2013**

#### **Clause 2 proposes to amend Section 2 of the Act on definition:**

The definition of “deemed interest” is moved from Section 16 which provide for deductions not allowed. This will imply that the definition of deemed interest is applicable not only in Section 16 but also throughout the Act.

**Clause 3 intends to amend Section 6A of the Act which provides for Residential Rental Income Tax:** It proposes to set the lower limit on residential rental income subject to income tax and also proposes reduction of the applicable tax rate from 12% to 10%.

Here, the minimum limit of Kshs. 144, 000 per annum (Ksh.12, 000 per month) is proposed thereby exempting lower incomes earners from being liable to income tax. Besides, Clause 14(1) proposes to reduce the income tax rate from the current 12% to 10%. This is meant to incentivize the owners of the residential rental houses to beef up compliance.

#### **Clause 4 seeks to amend Section 12 that provide for instalment tax:**

This Section provides for deduction of Advance Tax, Professional Fees, and Allowances Income as well as Presumptive Income Tax. However, it is noted that presumptive income tax Section was repealed in

2000 and therefore no longer in use. Hence, this proposed amendment is only updating the law to that effect.

**Clause 5 amends Section 16 of the Act on deemed interest:**

The definition of “deemed interest” is removed from Section 16 which provides for deductions not allowed and placed in Section two with other definitions implying that it will now applies across the entire Income Tax Act.

**Clause 6 proposes amendment to Section 35 which provide for deduction of tax from some income:** This proposal is meant to actualize the appointment of withholding tax agents for rent, premiums for use or occupation of immovable property.

With-holding tax by appointed agents is used to facilitate effective and efficient tax collections and to reduce tax evasions. Here, part of the taxes is withheld by the user of the immovable property and remitted to revenue agency at the point of making payment to the owner of such property. The ultimate aim is to enhance compliance.

**Clauses 7 to 12 and 16 propose to repeal various Sections of the Principal Act, mainly to alignment it with Tax Procedures Act 2015:**

This is to avoid duplication in legislation that can occasion conflict and confusion in interpretation. Sections proposed to be repealed are:

- i. Clause 7 proposes deletion of Subsections 6 and 7 of Section 37 that deals with appeal procedure for an aggrieved person by imposition of a penalty. The appeals are elaborately covered under Sections 52-57 of the Tax Procedures Act.
- ii. Clause 8 repeals Section 51A that deals with filing of tax returns and keeping of records. The advent of digitization of Tax Systems through ETR and i-Tax has rendered this section redundant given that it deals with hardcopy filing of returns hence the proposed deletion.
- iii. Clause 9 proposes repealing of Section 72 on imposition of additional tax in case of default in payment. Penalties are elaborately provided for under Part XII on Administrative and Offences of the Tax procedures Act 2015.
- iv. Clause 10 proposes to repeal section 75A that deals with instalment assessment. This is elaborately provided for under sections 28-31 of Tax procedures Act 2015.
- v. Clause 11 proposes to repeal section 98 on collection of tax from people leaving or have left Kenya. Tax Collections are elaborately covered under Part VII of the Tax Procedures Act 2015.
- vi. Clause 12 proposes to delete Section 105 on refund of overpaid tax after the expiry of 7 years. This is legislated under Section 47 of the Tax Procedures Act 2015.
- vii. Clause 16 proposes to repeal the 13<sup>th</sup> schedule that deals with transaction requiring PIN. This is provided for in Tax Procedures Act 2015.

**Clause 13 amends the First Schedule on Exemptions:**

The proposal seeks to exempt income from employment paid in form of bonus, overtime allowances for those whose taxable employment income does not exceed the lowest tax band.

This will give the low income earners more disposable income when they earn these allowances hence they will be able to have enhanced purchasing power with the attendant multiplier effect in the economy.

**In addition, there is a proposed exemption of Interest Income on Bonds issued by the East African Development Bank:**

This will promote investment in these bonds hence availing more credit facilities to be offered by the bank. This is because The East African Development Bank (EADB) which was operationalized in July, 2015 is profiled in same category with IMF, World Bank and the African Development Bank.

**Clause 14 amends the Third Schedule on tax rates and reliefs:**

Increase of annual resident personal relief from current Ksh.13, 944 to Kshs.15, 360. This is provided under clause 14(a) is 10% increase of the personal relief will lead to a net relief of Ksh.118 per month for employees. This will slightly increase the disposable income of taxable persons and will lead to a small reduction in the public revenue from the income tax.

**Additionally, there is a proposal to shift upwards of the employment income bands:**

Clause 14(b) proposes to increase the income lower band from 133,620 to Kshs.134, 164 per year and also to increase the uppermost band from Ksh.466, 716 to Ksh.513, 373 per annum.

The increase of the lower band implies that some taxable income will be exempted since they will fall below the lowest taxable income. Similarly, the raising of the uppermost band implies that some income that was subject to a 30% taxable rate will be charged at 25% if this is enacted.

This has the effect of modestly increasing the disposable income of those falling under the categories of these income bands. However, there will be a loss of tax revenue proportionate to the change.

**Further, there is a proposed reduction of corporate tax rate from 30% to 20% to companies that construct at least 1,000 residential cost units per year.** This is proposed in clause 14(c) and is geared towards incentivizing massive investment in residential houses so as to arrest the glaring housing inadequacy in the country.

**Clause 15 amends paragraph 6 of the Eighth Schedule which provides for taxation of gains from property:**

There is a proposal to exempt from tax a transfer of assets involving a company where spouses and their immediate family hold 100% shareholding.

This new proposal will add to the already existing tax exemption on transfer of assets between spouses, former spouses and their immediate family.

**Clause 16 proposes to amend the Thirteenth Schedule which provides for transactions requiring Personal Identification Number (PIN):**

The Schedule is proposed to be repealed. This is perhaps because the matter is provided for elaborately in the Tax Procedures Act.

**3.2. AMENDMENTS TO THE EXCISE DUTY ACT**

**Clause 17 and 18 amends Section 2 of the Principal Act on definitions and time of supply on importation respectively:**

The proposal incorporate the Special Economic Zones (SEZs) in the definition of the terms Export and Import. This is to incorporate the SEZs to the tax privileges that are enjoyed by the Export Processing Zones in tandem with the provisions of SEZs Act.

**Clauses 19 and 20 seek to correct the wrong references that are made in Sections 10 and 15(1) (b) of the Principal Act.**

**Clause 21 proposes to amend the First Schedule on Excisable Goods:**

There is an introduction of an excise duty of Kshs. 7.205 per litre on the Kerosene. This will lead to an increase in the price of kerosene to the consumers and given that a significant population still relies on kerosene as fuel, this will add to their tax burden and may not achieve the intention of checking on the adulteration of petroleum products as was contained in the 2016/2017 budget statement of the Cabinet Secretary.

**Also, there is an introduction of an excise duty on cosmetics and beauty products:**

Clause 21(b) proposes to impose a 10% excise duty on these items: This will harmonize the excise duty treatment of the products regionally with the EAC excise regime.

**Further, there is an exemption of waters of tariff 2201.90.00 from excise duty tax:**

This will make bottled water less costly therefore more accessible to consumers.

**Finally, there is a proposal to switch from specific tax system to ad valorem tax system on motor vehicles:**

Clause 21(d) repeals the specific taxes of Kshs. 150,000 and Kshs. 200,000 for vehicles less than 3 years and over three years respectively from date of first registration and substituting with an ad valorem rate of 20%. This is for equity taxation principle and also to enhance collection of tax revenue in this area.

**Clause 22 proposes an exemption is proposed on the excisable goods imported or purchased locally for direct and exclusive use in the implementation of Official Aid- Funded Project:**

This proposal seeks to reduce costs on Aid-funded projects subsequently enhancing the coverage in terms of beneficiaries of these projects. This used to be the practice before the enactment of Excise duty Act 2015 and is in line with other tax legislations like income tax that exempts incomes of Aid-agencies and charity organizations from taxation.

### **3.3. AMENDMENTS TO THE VALUE ADDED TAX ACT**

**Clause 23 of the Principal Act on definitions:**

The proposal incorporates the Special Economic Zones (SEZs) in the definition of the terms Export and Import. This is to incorporate the SEZs to the tax privileges that are enjoyed by the Export Processing Zones in tandem with the provisions of SEZs Act.

**Clause 24 amends Section 13 of the Act on taxable value of supply:**

The bill proposes to amend section 13(7) of the Act by exempting from taxation “any service paid in lieu of tips” provided that it does not exceed ten percent of the price of the service, excluding such service charge and that it is distributed directly to the employees of the hotel or restaurant in accordance with a written agreement between the employer and the employee.

The measure is likely to occasion revenue loss for the government currently generated from the service charge paid in lieu of tips. However, it will improve the take home remuneration of the employees in this sector hence increase their families’ disposable income as well as their morale.

**Clauses 25 & 26 amend Sections 33 & 36 of the Act on fraudulent claim and cancellation of registration respectively:**

The bill in clause 25 proposes to repeal the section 33 of the VAT Act on sanctions for falsifying tax refund claims since the sanctions for such an offence is adequately covered in the provisions of the Tax Procedure Act while clause 26 seeks to amend section 36 of the act to correct a cross referencing issue captured in the VAT Act.

**Clause 27 amends the First Schedule on Exemption supplies:**

The bill Proposes to amend the First Schedule of the Act in Part 1 on Exempt Supplies by including in the list items such as; Raw materials used in the manufacture of animal feeds, Motor vehicles imported or purchased for direct and exclusive use in the implementation of official aid funded projects, Equipment and machinery, including motor vehicles, imported or purchased locally for official use by KDF, NPS and military supplies, Direction-finding compasses, instruments and appliances for aircrafts, Liquefied petroleum gas, wheat seeds, Museum and natural history exhibits and specimens and scientific



equipment for public museums, and Chemicals, reagents, films, film strips and visual aid equipment imported or purchased prior to clearance through the customs by the National Museums of Kenya.

Other goods included in the list are; taxable goods for the direct and exclusive use for the construction of recreational parks, upon recommendation by the cabinet secretary responsible for matters relating to recreational parks, Taxable goods for the direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon the recommendation by the CS responsible for health who shall issue the criteria to be used to determine eligibility for the exemption and lastly garments and leather footwear manufactured in an export processing zone at the point of importation however it excludes from the exempted list, the goods supplied to special economic zone enterprises, developers and operators licensed under the Special Economic Zones Act.

The bill also includes the following taxable services in the exempt services list; Entry fees into the national parks, Services offered by tour operators on commission, Taxable services for direct and exclusive use for the construction of recreational parks, Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities, however it excludes from exemption services list; taxable services for special economic zone enterprises, developers and operators licensed under the Special Economic Zones Act.

**Clause 28 amends the Second Schedule on Zero Rated supplies:**

The bill also amends the second schedule on zero rated supplies by including in the list of zero rated items; Goods or taxable services to special economic zone enterprises and medicaments containing other antibiotics not put up in measured doses or in forms or packaging for retail sale however it excludes from the list medicaments of HS code 3303.20.00.

**3.4. AMENDMENTS TO THE TAX PROCEDURES ACT**

**Clause 29 amends Section 3 of the Principal Act on definitions:**

This is for correction of wrong cross-referencing by proposing deletion of Section 13(1) and replacing with 9A is to make reference to the relevant provision of rule of the Income Tax (PAYE rules).

**Clause 30 proposes to amend Section 15 which provide for taxpayers tax representative:**

It introduces the appointment of tax representative by non-resident person. Insertion of Section 15A as proposed in clause 30 enhances tax administration and will ensure that tax legislations are efficiently and effectively enforced despite the geographical distance between the non-resident tax payers and the relevant tax agencies. This is meant to enhance tax compliance.

**Clause 31 amends Section 17 on duties of appointed person:**

This is to correct a grammatical error where there is reference to the words "*person that*" instead of "*person shall*".

**Clause 32 amends Section 19 which provides for application for tax agent license:**

There is an introduction of the requirement to have a recommendation from Tax Agents Committee in processing of a registration application for tax agent license. It is meant to ensure that credible and most suitable persons are registered as tax agents given the crucial role they play to facilitate the achievement of the mandate of the revenue agency.

**Clause 33** too corrects the error in section 22(1) by replacing word “*meeting*” with the word “**writing**”. This concerns a notification that should be made in writing but not in meeting as currently wrongly captured.

**Clause 34 proposes to amend Section 24 under submission of tax returns:**

Empowerment of Kenya Revenue Authority (KRA) to seek auxiliary information with the aim of pre-populating the iTax system

**Clause 36 amends Section 37 of the Act which provides for tax relief due to doubt or difficulty in recovery:**

There is a proposed introduction of tax amnesty for owners of assets and businesses outside Kenya who may wish to re-invest back into the country

**Clauses 35, 37, 39(b)**

This proposes amendments to set time limits in which the Commissioner is to respond to tax payer’s requests and claims as follows:

- i. Clause 35: Sets 30 days as the period in which the taxpayer is to be notified by the Commissioner on the request for extension of time in tax payment. This is on Section 33(3).
- ii. Clause 37 by inserting words within 30 days in section 42(7) sets time-frame in which the Commissioner is to respond to the payer upon being duly informed that the payer is unable to pay the amount.
- iii. Clause 39(b) proposes to set the time frame of 90 days for the tax payer to be notified on tax refunds claim.

**Clause 38 amends Section 42 to provide for appointment and revocation of Value Added Tax Withholding agents:**

This is to reintroduce this provision that subsequent deletion in Tax Procedures Act 2015 purportedly deleted. With-holding tax is used to enhance tax compliance and to improve cash-flow to the exchequer.

**Clause 39 amends Section 47 on refund of over-paid tax:**

There is a reduction of period in which overpaid tax is to be refunded from 1 year to 5 years. This is to give KRA more time to refund the overpaid tax. Since there is no provision of payment of periodic interest on the refunds, the purchasing power of the refunded money will be eroded due to inflationary forces thereby adversely affecting the tax payers eligible to such refunds.

### **3.5. MISCELLANEOUS AMENDMENTS**

#### **Clause 40: Retirement Benefits Act**

The bill proposes to amend section 29 of the Retirement Benefit Act, 1997 in subsection (2), (3) & (4) on regulation of pension schemes in order to provide for non-renewable perpetual licensing framework for institutions licensed by Retirement Benefit Authority (RBA). It also seeking to compel the managers, custodians and administrators of pension schemes to submit current audited financial statements, list of directors and top management, any changes in clientele by the 30th of September every year as well as changes in shareholding, directorship or top management within thirty days after the change has occurred.

The measures proposed under the amendments are meant to promote transparency and accountability in the operations of the institutions as well as remove the requirement of annual licensing.

#### **Clause 41: Kenya Revenue Authority Act**

The proposal seeks to amend the Second Schedule of the Kenya Revenue Act in paragraph 2 (1) on quorum of board meetings. It specifically amends the act to include the ex officio members in the raising of quorum for a meeting of the board.

#### **Clauses 42 - 44: Capital Markets Act**

The Bill proposes to amend Section 2, 12 and 23 of the Capital Markets Act, 2008 on the powers of the Capital Market Authority. The amendment introduced into the act provides for among things; the definition of "online forex broker", it also empowers the capital market authority to regulate and supervise online forex trading in order to facilitate effective and secure trading for the estimated 50,000 investors in the country in online forex trading. The amendment also seeks to compel the "online forex brokers" to acquire a valid license as per the provisions of the Capital Markets Act, 2008.

This is likely to enhance proper regulation of the sector which has witnessed growing interest in online trading of foreign currency particularly among the youth and also allow the authority to generate revenue from licensing of the online forex brokers.

#### **Clauses 45 - 48: Banking Act**

The amendment Proposes to revise section 31 of the Banking Act in subsection (3)(b), (4), (5) and also insert a new subsection (6) so as to allow the incorporation of the SACCOs, and public utility companies and any other institution mandated to share credit information; into the credit information sharing framework as well as allow the cross border sharing of credit information amongst financial institutions.

This measures proposed in the Bill are meant to increase access to credit, reducing transaction costs, enhancing efficiency in financial intermediation and fostering financial stability through reduction in non-performing loans.

The Bill also proposes to amend section 34(2) of the banking act on the powers of the Central Bank of Kenya to intervene on management. It specifically seeks to compel the Central Bank of Kenya to consult the cabinet secretary in charge of the National Treasury when intervening on a company since the monetary policy aspect of the country rests with the National Treasury and therefore it is prudent for the Central Bank of Kenya to consult with the National Treasury to mitigate the adverse effect of such an intervention on the economy.

In addition, the Bill seeks to amend section 55(2) of the Banking Act on regulation of the banking sector. It specifically seeks to scale up the punitive measures that are in place for financial institutions or individuals that do not comply with the provisions of the Banking Act or prudential guidelines. The fines were increased from Kshs. 5 million to Kshs. 20 million for financial institutions and for the case of natural persons the fines were increased from two hundred thousand shillings to 1 million shillings.

Finally the Bill proposes to amend the Second Schedule of the Banking Act on core capital requirement for banks and mortgage finance institutions. It seeks to significantly increase the Bank's or mortgage finance company's core capital requirement from Kshs. 1 billion to Kshs 5 billion by 2019.

The measure is meant to increase the capitalization of banks in order to ensure we have a strong and stable banking system since such a move might lead to mergers giving rise to bigger conglomerates that are highly capitalized and perhaps capable of withstanding financial shocks and crises.

#### **Clause 49: Alcoholic Drinks Control Act**

The Bill seeks to amend section 68A of the Alcoholic Drinks Control Act, 2010 on tax policies so as to align the act with the provisions of the section 7(2) of the Excise Duty Act. The proposed amendment leaves to the discretions of the Cabinet Secretary when to grant remission on excise duty from beer or wine made of sorghum, millet or cassava unlike under the Alcoholic Drinks Control Act which was making it mandatory for the Cabinet Secretary to grant excise duty remission of **ninety per centum** so long the beer is made of sorghum, millet or cassava grown in Kenya.

#### **Clauses 50 – 51: Kenya Deposit Insurance Act**

The Bill proposes to amend Section 7 of the Kenya Deposit Insurance Act, 2012 on board nomination. It specifically seeks to exclude from direct board membership in the corporation's board persons from member institutions licensed by the Central Bank of Kenya and replaces them with the Chief Executive Officer of the Kenya Bankers Association.

The measure is to solve the possibility of conflict of interest among members of the board of directors of the Kenya Deposit Insurance Corporation so as to promote good corporate governance, transparency and accountability in the management of the corporation.

The Bill also seeks to amend Section 43 in subsection (1) of the Kenya Deposit Insurance Act, 2012 on the appointment of Kenya deposit Insurance Corporation as a receiver to provide for the involvement of the Cabinet Secretary in charge of National Treasury in the appointment of the corporation as a receiver. This is likely to take away the independence of the Central Bank of Kenya in the execution of its mandate since it is mandatory for it to consult the Cabinet Secretary.

#### **Clause 52: Public Finance Management Act**

The Bill proposes to amend the Public Finance Management Act in Section 193(4) on the tenure of the Accounting Standards Board members. It specifically provides for the appointment of second term of three years for members of the Board. The measure is meant to preserve institutional memory and ensure continuity in the affairs of the board. However, the amendment seems to makes the renewal of the contracts mandatory.

#### **Clauses 53 – 58: Tax Appeals Tribunal Act**

The Bill amends the Tax Appeals Tribunal Act to provide for among other things the qualification of a secretary to the tribunal, procedure of appeals, procedure for submission of material document by the Commissioner General before the tribunal and the appellants and appellant's representatives before a tribunal as well as the mode of appointment for a clerk to a tribunal panel.

The amendments are meant to streamline the Tax Appeals Tribunal Act, 2013 with a view to improve the effectiveness and the efficiency of the Tribunal in order for it to serve its clients in expeditious manner.

#### **Clause 59: Special Economic Zones Act**

The Bill proposes to amend Section 35 of the Special Economic Zones Act, 2015 on benefits accruing to special economic zone enterprises, developers and operators. The amendment removes the blanket tax exemptions with respect to the special economic zones under the Act and limits the benefits to targeted tax incentives as is or shall be provided in the respective tax laws.

### **4.0. STAKEHOLDERS VIEWS ON THE FINANCE BILL, 2016**

#### **4.1. Kenya Oil and Gas Association (KOGA)**

##### **VAT on supplies for the oil and gas sector**

Clause 27 of the Bill is amended –

(a) in paragraph (a) by inserting the following new subparagraph immediately after subparagraph (i) –

(ia) by deleting paragraph 30 and substituting therefor the following new paragraph –

30. Taxable supplies, excluding motor vehicles principally designed for the transport of persons or goods other than special purpose motor vehicle under heading no 87.05 required for use in the field, imported or purchased for direct and exclusive use in oil or gas exploration and development, by a company granted oil or gas exploration licence in accordance with a production sharing contract with the Government of Kenya, and in accordance with the provisions of the Petroleum (Exploration and Production) Act (Cap.308) upon recommendation by the Cabinet Secretary responsible for energy;

and

(b) in paragraph (b)(iv) by inserting the following new paragraph immediately after the proposed paragraph 27 –

28. Taxable services imported or purchased for direct and exclusive use in oil and gas exploration and development, by a company granted oil or gas prospecting license in accordance with a production sharing contract with the Government of Kenya under the provisions of the Petroleum (Exploration and Production) Act (Cap.308) upon recommendation by the Cabinet Secretary responsible for energy.

OR

Clause 28 of the Bill is amended in paragraph (a) by inserting the following new paragraph immediately after the proposed paragraph 12 –

13. The supply of goods or taxable services, excluding motor vehicles principally designed for the transport of persons or goods other than special purpose motor vehicle under heading no 87.05 required for use in the field, imported or purchased for direct and exclusive use in oil or gas exploration and development, by a company granted oil or gas exploration licence in accordance with a production sharing contract with the Government of Kenya and in accordance with the provisions of Petroleum (Exploration and Production) Act (Cap.308) upon recommendation by the Cabinet Secretary responsible for energy.

#### **Capital Gains Tax reinvestment relief**

##### **NEW CLAUSE**

That the following new clause be inserted immediately after clause 4 –

4A. Section 15 of the Income Tax Act is amended in subsection (5A) by inserting the following new paragraph after paragraph (d) -

(e) subject to the recommendation of the Cabinet Secretary responsible for energy, where and to the extent that, the consideration received from the disposal of an interest in a person, is wholly and exclusively utilised in a contract area by a contractor in undertaking petroleum operations approved under a petroleum agreement, within a period of twelve months prior to and thirty six months after the disposal of the interest in a person occurs or such other longer periods as will be approved by the Commissioner, then the net gain chargeable to tax shall be reduced by the following amount:

NG x RP/P Where –

NG - net gain attributable to Kenya as determined under this section after applying indexation allowance;

RP – Consideration utilised in the contract area towards expenditure approved under a petroleum agreement ;

P - Amount or the value of consideration attributable to immovable property in Kenya.

#### **Capital Gains Tax rate of tax**

##### **NEW CLAUSE**

THAT the following new clause be inserted immediately after clause 5 –

5A. Section 34 of the Income Tax Act is amended in subsection (1) by deleting paragraph (i) and substituting therefor with the following new paragraph –

(i)tax upon the net gain derived on the disposal of an interest in a person subject to tax under section 3(2) (g) shall be charged at the rate specified in the Ninth Schedule.

**NEW CLAUSE**

**THAT** the following new clause be inserted immediately after clause 15 –

15A. The Ninth Schedule of the Income Tax is amended by inserting the following new paragraph after paragraph 7 –

7A. Notwithstanding any contrary provisions, tax upon the net gain derived on the disposal of an interest in a person subject to tax under section 3(2) (g) shall be charged at the rate applicable under the 8th schedule and shall not be subject to further taxation.

**Capital gains tax cost basis**

**NEW CLAUSE**

**THAT** the following new clause be inserted immediately after clause 2 –

2A. Section 3 of the Income Tax Act is amended in subsection (3) (c)

by –

- (a) deleting subparagraph (ii) and substituting thereof the following new subparagraph -
- (ii) “net gain”, in relation to the disposal of an interest in a person, means the consideration for the disposal reduced by the adjusted cost of the interest; and
- (b) deleting the word “cost” appearing immediately before the word “consideration” in subparagraph (iii) and substituting therefor the words “adjusted cost”.

**NEW CLAUSE**

**THAT** the following new clause be inserted immediately after clause 15 –

15A. The Ninth Schedule of the Income Tax is amended in paragraph 1 by deleting the definition of “cost” and substituting therefor the following new definition –

“adjusted cost” in relation to an interest in a person, a mining or petroleum right, or mining or petroleum information means –

- (i) the total consideration given for the acquisition of the interest, right or information, including the fair market value of any amount given in kind determined at the time the amount is given;
- (ii) the amount of any expenditure incurred on the interest, right, or information at any time after its acquisition by or on behalf of the transferor for the purpose of enhancing or preserving the value of the interest, right, or information, at the time of the disposal;
- (iii) the amount of expenditure wholly and exclusively incurred at any time after the acquisition of the interest, right or information by the transferor establishing, preserving or defending title to, or right over, the interest, right or information; and
- (iv) the amount of incidental costs to the transferor of acquiring the interest, right or information.

**Capital gains tax - tax neutral transactions**

**NEW CLAUSE**

That the following new clause be inserted immediately after clause 4 –

4A. Section 15 of the Income Tax Act is amended in subsection (5A) by inserting the following new paragraphs after paragraph (e) –

(f) Notwithstanding anything in this section and subject to recommendation from the Cabinet Secretary for the time being responsible for energy, no net gain shall be included in the income

chargeable to tax on the disposal of an interest in a person that is necessitated by, and takes place pursuant to, a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution, reconstruction, reorganisation or restructuring of corporate identity involving one or more group companies (to the extent otherwise permitted by law);

The recommendation of the Cabinet Secretary shall not be unreasonably withheld and shall be granted or refused within thirty days of receipt by the Cabinet Secretary of notice from the contractor that it intends to enter into such a transaction. Where the Cabinet Secretary fails to communicate his or her decision, in respect of the notice given within the stipulated period, the recommendation shall be deemed to have been granted.

#### **Capital gains tax –indexation relief**

##### **NEW CLAUSE**

That the following new clause be inserted immediately after clause 4 –

4A. Section 15 of the Income Tax Act is amended in subsection (5A) by inserting the following new paragraphs after paragraph (b) –

(ba) The amount of net gain shall be adjusted by an indexation allowance from 1 January 2015 –

(i) to give the gain chargeable to tax for the purpose of this Act; or

(ii) if the indexation allowance equals or exceeds the net gain, so as to extinguish it (in which case the disposal shall be one on which, after taking account of the indexation allowance, neither a gain nor a loss accrues).

Notwithstanding anything to the contrary, sub-section (ba) shall not apply to a disposal on which a loss accrues.

(d) (i) The indexation allowance is the aggregate of the indexed rise in each item of relevant adjusted cost; and, in relation to any such item of cost, the indexed rise is a sum produced by multiplying the amount of that item by a figure expressed as a decimal and determined, subject to subparagraphs (ii), (iii) and (iv) below, by the formula—

$$(RD-RI)/RI$$

where—

RD is the retail prices index for the month and year in which the disposal occurs; and

RI is the retail prices index for January 2015 or the month and year in which the expenditure was incurred, whichever is the later.

(ii) if, in relation to any item of adjusted costs, RD, as defined in subsection (1) above, is equal to or less than RI, as so defined, the indexed rise in that item is nil.

(iii) if, in relation to any item of adjusted cost, the figure determined in accordance with the formula in subsection (1) above would, apart from this subsection, be a figure having more than 3 decimal places, it shall be rounded to the nearest 3 decimal place.

(iv) the Commissioner shall issue guidance on the retail price index that will be adopted for the



purpose of applying indexation allowance.

**Withholding tax on natural resource income**

**NEW CLAUSE**

THAT the following new clause be inserted immediately after clause 2 –

2A. Section 3 of the Income Tax Act is amended in subsection (2) by inserting the following proviso immediately after paragraph (c) –

Notwithstanding any other provision of this Act, income is not chargeable to tax under subsection (2) (h) where, and to the extent that, it is chargeable to tax under any other provision of this Act.

**WHT on reimbursement of costs incurred by sub-contractors and mobilisation or demobilisation costs**

**NEW CLAUSE**

THAT the following new clause be inserted immediately after clause 15 –

15A. The Part IV of the Ninth Schedule of the Income Tax be amended in Paragraph 15 –

(a) by inserting the following proviso immediately after item (3);

(3A) The rate of withholding tax applicable under paragraph (2) shall be applied to the service fee but excluding –

- (i) Moneys actually paid by a licensee or contractor to reimburse the non-resident subcontractor for the cost of mobilization and demobilization; and
- (ii) Reimbursement of expenses.

(B) Payment for mobilization and demobilization shall not exceed the amounts normally paid in the international petroleum or mining industry, having regard to the circumstances of the contract, and shall not be at a level calculated to transfer a part of the taxable service fee to the non-taxable moneys referred to in subparagraph (3)(A).

In this Part –

“mobilization and demobilization” means the movement of men and equipment to Kenya prior to operating, and from Kenya after completion thereof, including the movement of men and equipment in Kenya during operations provided the movement is not to a third party;

“reimbursement of expenses” means payment by a contractor or licensee to a subcontractor to reimburse that subcontractor for payments made to a third party on behalf of the contractor or licensee in respect of goods and services which are incidental to the subcontract and would not normally, in the international petroleum or mining industry, be included in the taxable service fee, but does not include a charge for handling or administration.

**Exemption of meals and other subsistence provided in remote locations from PAYE**

**NEW CLAUSE**

THAT the following new clause be inserted immediately after clause 2 –

2A. Section 5 of the Income Tax Act is amended in subsection (4) by inserting the following new paragraph immediately after paragraph (f)-

(fa)The value of meals and other amenities provided to employees and independent contractors directly by the employer or by a third party on behalf of the employer who is a registered taxpayer at remote site locations for upstream exploration and production operations on a temporary basis;

OR

increase the threshold for non-taxable meals from current Kshs. 48,000 which is too low.

**Importation issues - Exemption to Railway Development Levy (RDL)**

**Importation issues – Import Declaration Fees**

**1. NEW CLAUSE**

THAT the following new clause be inserted after clause 59 –

60. The Customs and Excise Act is amended in section 117A (6) by inserting the following new paragraph immediately after paragraph (c)—

(d) for the direct and exclusive use in oil exploration and development by a company granted exploration license in accordance with production sharing contracts under the provisions of Petroleum (Exploration and Production) Act (Cap. 308), upon recommendation by the Cabinet Secretary responsible for energy;

And

2. Exclude IOCs from the process of obtaining waivers prior to relief from IDF similar to other import taxes.

**4.2. Pricewater House Coopers (PWC)**

**Limitation of benefits**

Delete sections 41(5)-(7) of the Income Tax Act and replace them with provisions based on ‘beneficial ownership of income’ provision as follows:

‘Except in the case of a Public Limited Company or a subsidiary of a Public Limited Company in the same country of residence as the Public Limited Company, where an agreement made under this section provides that income derived from Kenya is exempt or excluded from tax, or the application of the arrangement results in a reduction in the rate of Kenyan tax, the benefit of that exemption, exclusion or reduction shall not be available to a person who, for purposes of the arrangement –

- (a) Receives the income in a capacity which is other than that of a beneficial owner, within the meaning accorded to that term by the relevant international agreement, and who does not have full and unrestricted ability to enjoy that income and to determine its future uses; and
- (b) Does not possess economic substance in the country of residence in the case of interest, royalties and management fees of whatsoever nature.’

**Withholding VAT**

- A. Amendment of section 42A of the **Tax Procedures Act, 2015 (TPA)** as follows:

That subsection (3) of section 42A of the TPA be amended as follows;

(3) Provided that subsection (1) shall not apply where –

- (a) taxable supplies relate to official aided funded projects;
- (b) the Commissioner is satisfied the supplier has regularly complied with the obligations under this Act through issuance of a Tax Clearance Certificate;

- (c) the aggregate payment by the agent to the supplier in a month does not exceed the minimum level as determined by the Commissioner upon application by the supplier; or
- (d) the Commissioner is satisfied on application that the supplier's nature of business makes it impractical to withhold and account for tax in accordance with this Section.

**B. Amendment of section 17 of the VAT Act, 2013**

That the VAT Act, 2013 be amended by deleting the proviso to sub section (5) of section 17 and substituting thereof, a new proviso which will read as follows

Provided that any such excess shall be paid to the registered person by the Commissioner where-

- (a) the Commissioner is satisfied that such excess arises from making zero rated supplies; OR
- (b) tax is withheld by appointed tax withholding agents; and
- (c) the registered person lodges the claim for the refund of the excess tax within twelve months from the date the tax becomes due and payable.

**Education**

**Amendment of the Second Schedule of the VAT Act 2013**

Introduction of a new paragraph under Part C of the Second Schedule –to provide for zero rating of the following goods:

4820.20.00	Exercise books.
4901.91.00	Dictionaries and encyclopedias, and serial installments thereof.
4901.99.00	Other printed books, brochures, leaflets and similar printed matter.
4903.00.00	Children's picture, drawing or colouring books.
4904.00.00	Music, printed or in manuscript, whether or not bound or illustrated.
4905.10.00	Globes, printed.
4905.91.00	Maps and hydrographic or similar charts of all kinds including atlases, wall maps and topographical plans, printed, in book form.
4905.99.00	Other maps and hydrographic or similar charts of all kinds including atlases, wall maps, and topographical plans, printed.
4911.99.10	Instructional charts and diagrams.
4911.99.20	Examination papers, excluding stationery.
8443.31.00	Machines which perform two or more of the functions of printing, copying or facsimile transmission, capable of connecting to an automatic data processing machine or a network.
8443.32.00	Other printers capable of connecting to an automatic data processing machine or to a network.

**Oil and gas subcontractors**

The Second Schedule to the VAT Act, 2013 be amended in PART A by inserting a new paragraph 13 immediately after paragraph 12 as follows:

13. The supply of taxable goods or taxable services, excluding motor vehicles principally designed for the transport of persons or goods other than special purpose motor vehicle under heading no 87.05 required for use in the field, imported or purchased for direct and exclusive use in oil or gas exploration and development, by subcontractors of a company granted oil or gas exploration license in accordance with a production sharing contract with the Government of Kenya, and in accordance with

the provisions of Petroleum (Exploration and Production) Act (Cap.308) upon recommendation by the Cabinet Secretary responsible for energy.

**Tourism and hospitality**

The Finance Bill, 2016 proposes to amend Section 13 (7) of the VAT Act, 2013;

- (a) by adding the words “any service charge paid in lieu of tips” at the end thereof;
- (b) by adding the following proviso at the end thereof-

Provided that this subsection shall only apply in respect of service charge where-

- (a) the service charge is distributed directly to employees of the hotel and restaurant in accordance with a written agreement between the employer and the employee; and
- (b) the service charge does not exceed ten percent of the price of the service, excluding such service charge.

**Zero-rating of local supplies to duty free shops**

PART A of the Second Schedule to the VAT Act, 2013 be amended by inserting the following new paragraph 12 immediately after the proposed paragraph 11:

12. “The supply of goods and taxable services to duty free shops ”

**4.3. Institute of Certified Public Accountants of Kenya (ICPAK)**

**Income Tax Act, Cap. 470**

Amend section 7A by –

(a) inserting the following new paragraph immediately after paragraph (d) in subsection (3) –  
 “In case of tax incentives granted under this Act, one shilling for every shilling of tax incentive granted multiplied by the tax rate”.

(b) inserting the following new subsection immediately after subsection (6)-  
 “(6a) If dividends have been declared out of gains taxed under section 3 (2) (f), compensating tax shall not apply”.

Amend Section 22A to increase the tax deductible threshold for contributions to three hundred and sixty thousand.

Delete section 54 and paragraph 11 of the Income Tax (Withholding Tax) Rules, 2001.

Amend paragraph 13 (1) of the Eighth Schedule by inserting the following words immediately after the words “public interest” -

“or to have a legal and economic benefit where the organisations have not been involved in restructuring for the last five years”.

**Tax Procedures Act, No. 29 of 2015**

Introduce Voluntary Disclosure Programme (VDP) to be designed in such a way that the Kenya Revenue Authority (KRA) is in a position to accord penalty treatment for first time voluntary disclosures as follows:

<b>Types of Voluntary Disclosure</b>	<b>Penalty and Interest treatment</b>	<b>Timely voluntary disclosure</b>
A 100% waiver of penalty interest made within a grace period of 3 years from the statutory		

filing date.

Voluntary disclosure made after the grace period of 3 years. A 80% waiver of penalty interest.

The VDP should be taxpayer initiated and made before the taxpayer receives:

- a) A query from KRA or
- b) A notification from KRA of the commencement of an audit or investigation.

For a taxpayer who has already received a query or is already under a KRA audit or investigation, in order to qualify for reduced penalties, the voluntary disclosure must not be directly related to the scope of query, audit or investigation.

Second time repeat offenders can only be entitled to 40% waiver if the disclosure was similar to the previous one. Thereafter no waiver will be granted.

Amend section 46 by introducing a new subsection (3) which provides as follows -

“(3) When a taxpayer has tax recoverable or tax losses that are not fully exhausted in relation to a business carried on by the taxpayer and the taxpayer has transferred all or some of the assets of the business to a related person (referred to as the transferee) the transferee shall be entitled to utilize the tax recoverable or tax losses of the transferor subject to the transfer agreement”.

Delete Section 48 and replace with the following new:

“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 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 as follows:

(a) provide for remission of interest under subsection (6) by –

- (i) inserting the words “or interest” immediately after the word penalty where it first appears; and
- (ii) inserting the words “and interest” immediately after the word penalty where it second appears;

(b) delete subsection (7) and substitute it with the following new subsection 7 –

“(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.

The Second Schedule to Act be amended by –

(a) deleting section 35 (6B) and 37 (6) of the Income Tax Act;

(b) deleting section 55 of the Income Tax Act; and

(c) deleting section 96 of the Income Tax Act.
<b>Kenya Information and Communication Act, Cap. 411A</b>
Amend section 27A of the Act to include the provision that subscribers should provide PIN certificates to the telecommunication operators for registration.
<b>Value Added Tax Act, 2013</b>
Amend the Act to clearly exempt VAT on cards payments and related fees or charges.
Amend section 8 (1) to remove the ambiguity as to when a service qualifies as exported.
Amend section 17 (5) (a) by inserting the words “or from withholding VAT credits from VAT withheld” immediately after the words “zero rated supplies”.
Amend the Second Schedule to include text books and religious materials under specific HS codes back into the list of zero rated supplies.
Amend Part A of the Second Schedule to the VAT Act by inserting a new paragraph 12 which provides as follows -
“(12) The supply of taxable goods or taxable services to be used exclusively for development and extraction activities of a mining company granted a mining license in accordance with the Mining Act, upon recommendation by the Cabinet Secretary responsible for Mining”.
Amend the Second Schedule to provide for zero rating of goods and services imported or purchased locally by oil and gas companies for all phases of the oil and gas cycle.
Paragraph 7 of Part II of the First Schedule to the VAT Act Clarification of the word hire under Part II – services of the first schedule
Amend Part C of the Second Schedule to provide for description of HS Codes 3003.10.00 and 3003.90.00.
Extension of the Transition Period for Imposition of VAT on Petroleum Products
In the Budget Statement FY 2016/17 the Cabinet Secretary, National Treasury extended by one year the transition period for the imposition of VAT on petroleum products which was to expire in September 2016. However, this was not incorporated in the Finance Bill 2016
<b>Inconsistencies between the TPA and VAT Act 2013</b>
The Second Schedule of the TPA should be amended to delete section 30 of the VAT Act.
Section 104(1) of the TPA should adopt to section 63 of the VAT Act.
The TPA to be amended to include the provision where the Commissioner can be able to remit the interests.
Clarification is required from the Commissioner on the date when the interest should start running.
More clarification on the publication of a private ruling to be provided to safeguard confidentiality.
<b>EXCISE DUTY ACT 2015</b>
The Act should be amended to adopt code based classification in order to avoid overlapping of excisable goods.
The purpose of imposing excise duty on goods is to discourage consumption and water being a basic commodity should not be subjected to excise.
(a) A clear definition of interest should be introduced in the Act to provide clarity on exemption of interest. The definition will also avoid any future disputes with KRA surrounding the issue;
(b) In addition, return on loan should be defined in the Act. The Act should also exempt any administration, processing, or lending fees in whatever form from excise duty.

Excise duty on cards and any other related charges or fees should be exempted from excise duty in order to support innovative financial and paperless mode of payments and improve access of financial services as well as promote globalization through usage of cards.

#### 4.4. Kenya Association of Manufacturers

##### **Excise Duty Act, 2015**

THAT clause 19 of the Bill be deleted and substituted therefor with the following new clause –  
19. Section 10 of the Excise Duty Act 2015 be deleted.

Section 28 of the Excise Duty Act is amended –

- (a) in subsection (3) by inserting the words “excluding excise stamps” immediately after the word “inscription”; and
- (b) in subsection (4) by inserting the words “and unless the relevant excisable goods are exported” immediately after the word “goods” where it second appears.

Clause 21 of the Bill is amended –

- (a) In paragraph (c) by inserting the words “and mineral water of tariff no. 2201.10.00” immediately after the number “2201.90.00”;
- (b) By inserting the following new paragraphs after paragraph (c)-
  - (ca) by inserting the expression “excluding fruit juices (including grape must) and vegetable juices of tariff no. 20.09”, immediately after the word “juices” appearing in the item titled Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter;
  - (cb) by inserting the words “the excise duty for carbonated non-alcoholic drinks under tariff no. 2202.10.00 and 2202.90.00 is reduced from kshs. 5 to Ksh. 3.50 per litre” appearing under the item on Waters and other non-alcoholic beverages not including fruit or vegetable juices.

- (c) By deleting paragraph (e)

Inclusion of tariff codes for all the items under the first schedule.

Amend the First Schedule as follows:

- (a) The excise duty on Beer, Cider, Perry, Mead, opaque beer and mixtures of fermented beverages and spirituous beverages of alcoholic strength not exceeding 10% Spirits of undenatured alcohol; spirit liqueurs and other spirituous beverages of alcoholic strength exceeding 10% is reduced from “Shs. 100 per litre” to “Kshs. 75 per litre;
- (b) reduce the excise duty on spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10% from “Shs. 175 per litre with “Shs. 145 per litre;

Amend the First Schedule as follows:

- (a) under item titled “electronic cigarette” replace the word “electronic cigarette” with the words “e-liquid”;
- (b) under item titled “electronic cigarette” replace the words “Excise duty of Sh. 3,000 per unit” with “Excise duty of sh. 3,000 per 1,000 millilitres”.

- (a) The Excise Duty Act is amended by inserting the following new section after

section 43 –

43A. There shall be a minimum retail pricing on cigarette products to be specified by the Commissioner in the First Schedule.

(b) The First Schedule of the Excise Duty Act is amended in Part I by inserting the following new paragraph immediately after paragraph 2 -

3. The minimum retail pricing on cigarette products shall be at an excise duty rate of sh. 100 per pack of 20 king size cigarettes.

The First Schedule of the Excise Duty Act is amended in Part III deleting the definition of electronic cigarettes and substituting therefor with the following new definition-

“electronic cigarettes” means battery powered electronic devices that deliver an aerosol (‘vapour’) without tobacco smoke generated from a liquid formulation (‘e-liquid’) whether or not containing nicotine and typically consisting of a battery, a heating element and a storage tank for the e-liquid”.

(a) Immediate stay of application of the 20% excise duty on locally assembled vehicles from completely knocked down kit as provided in clause 21 (d) of the Bill;

(b) The Motor Vehicle Assemblers further recommend the reinstatement of the excisable vehicles as captured under the Fifth schedule of the repealed Customs and Excise Act indicating the 8 Digit HS Code of the vehicles and explicitly excluding Unassembled Vehicles from excise duty under the First Schedule of the Excise Duty Act.

Repeal of the provisions and excise rate under Part 1 of the First Schedule under item Motor cycles of tariff 87.11 other than motor cycle ambulances and Shs. 10,000 per unit.

Clause 21 of the Bill is amended by deleting paragraph (a) and substituting therefor with the following new paragraph

(a) for purposes of this Act, kerosene for industrial use is exempted and the Commissioner shall publish in the Kenya Gazette the list of industrial users registered, certified and exempted.

#### VAT ACT

Clause 27 of the Bill is amended in paragraph (a) by deleting sub-paragraph (i) and substituting therefor with the following new sub-paragraph –

(i) by inserting the tariff numbers 2302.10.00, 2302.30.00, 2306.10.00, 2302.20.00, 2302.40.00 and 2306.30.00 at the end of paragraph 43;

Amend the Second Schedule to the VAT Act to allow for zero rating of these finished goods to allow for claim for input tax:

- Pest Control insecticides
  - Other Similar Products under
- 380810 Insecticides  
380820 Fungicides  
380830 Herbicides, Anti-sprouting Products, Plant-growth Regulators  
380840 Disinfectants  
380890 Rodenticides,
- Raw and packaging materials for agricultural pesticides

Others are:



<ul style="list-style-type: none"> <li>• ROPP Caps</li> <li>• Solar Water heaters</li> <li>• dewormers, Acaricides, Paraciticides – 3004.90.90</li> <li>• Wet blue tanned cow hides – 4104.11.00</li> <li>• Wet blue tanned goat skins – 4106.21.00</li> <li>• Wet blue tanned sheep skins – 4105.10.00</li> <li>• Cow Crust – 4104.49.00</li> <li>• Goat crust – 4106.22.00</li> <li>• Sheep crust – 4105.30.00</li> <li>• Wet blue splits – 4104.49.00</li> <li>• Finished Leather – 4107.19.00</li> <li>• Poultry products, meat and eggs</li> <li>• Bread</li> <li>• Products under HS heading 31.05 Mineral or chemical fertilisers containing two or three of the fertilising elements nitrogen, phosphorus and potassium; other fertilisers; goods tablets or similar forms or in packages of a gross weight not exceeding 10 kg.</li> <li>• Solar Water heaters</li> </ul>
Amend the Second Schedule to the VAT Act to allow for zero-rating of filtering or purifying machinery and apparatus for liquids
Amend the Second Schedule to the VAT Act to allow for zero-rating of officially donor funded projects.
Amend the First Schedule of the VAT Act to exempt local manufacturers on sale of locally manufactured Footwear, Leather Goods and Leather Garments (accessories).”
<b>Income Tax Act</b>
Expand the current investment allowance to cover for storage of raw materials and finished products used for manufacturing process.
Inclusion of a provision that provides for the taxable benefit on the employee to be based on the depreciated value of the motor vehicle (depreciation rate to be used at 25% per annum on a reducing balance basis).
Amend Paragraph 3 (a) of Heading B to the third schedule to the Income Tax Act by deleting the words “twenty percent” and substituting therefor with “ten percent”.
Increase allowance of interest on housing loans from KSh. 150,000 to KShs.300, 000.
Collection and distribution of SBP Fees - Counties collect and apportion Single Business Permit Fees to activities. There is need for the creation of a central collection of monies collected by County Governments from the issuance of Single Business Permits (SBP).

#### 4.5. British American Tobacco

The introduction of the single tier excise regime through the Excise Duty Act, 2015 is a welcome move and is in line with the best practice on taxation of cigarettes where all cigarettes are taxed at the same rate in a transparent, predictable and easy to administer manner. In addition, this is in line with the government’s overall public health policy. This system should, therefore, be maintained.

#### 4.6. Anjarwalla & Khanna

##### **Capital gains tax**

Amend the proviso to provide as follows:

“No gain or loss shall be included in the computation of income under section (3) (2) (f) in the case of a transfer of property in exchange for other property that is necessitated by, and takes place pursuant to, a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution, reconstruction or similar restructuring of corporate identity involving one or more associated companies (to the extent otherwise permitted by law) upon approval by the Commissioner; but following that exchange, the cost to the transferor of the property acquired by him shall be the cost of the property transferred, except that the cost to a company of property received by it in exchange for the issue of its own shares or debentures shall be the cost to the issue of the property received.

Where any such exemption has been allowed in connection with the acquisition by the transferor company of property in another company and the transferee company within a period of two years from the date of grant of the exemption, ceases, otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the property so acquired, the exemption shall be deemed not to have allowed and an amount equal to the capital gains tax remitted shall become payable forthwith, and shall be recoverable from the transferor company as a debt due to the Government, together with penalties and interest thereon from the date the capital gains tax would have become payable.

Provided that this exemption shall only be applicable where the criteria under section 95 or 96 of the Stamp Duty Act have been fulfilled.

Amend clause 14 (c) of the Bill to:

(i) define “unit” further by providing its size in terms of square metres and provide that the rental space ought to be a building occupied or capable of being occupied as a residence and specifically not including a hotel or holiday accommodation; and

(ii) provide clarity on which accounting period the real estate developers would start enjoying the concessional rate of 20%. They propose that the 20% rate be applicable from the financial year in which the Cabinet Secretary responsible for Housing approves the housing development, provided the construction is commenced within a specific duration of time (for example 6 months).

##### **Taxation regime in betting, gaming and lotteries industry**

Amend the Income Tax Act with regard to the taxation of winning by punters or players as follows:

- (a) Clarity be provided on whether the 7.5% withholding tax is a first and final tax on the punter or player, failing which, an inclusion of such winnings as a specified source of income under section 15 (7) (e);
- (b) Amend paragraphs (3) (m) and (5) (j) of Head B of the Third Schedule to make reference to “gross winnings” paid by bookmakers to punters as opposed to the current “gross profit”;
- (c) With reference to the size of winnings paid by bookmakers to punters, the law should allow for a different compliance mechanism for a bookmaker to deduct and remit the withholding tax due;

Amend the Betting, Lotteries and Gaming Act to provide the application of one WHT rate for all winnings from betting, gaming and lotteries to simplify tax compliance.

Amend clause 30 of the Bill in the proposed new section 15A by inserting the words “being a person who controls the non-resident’s affairs in Kenya including a manager of the non-resident’s business” immediately after the words “tax representative” where it second appears in subsection (2).

Delete clause 34 of the Bill.

Amend clause 36 of the Bill in the proviso to the proposed new section 37B by -

- (a) inserting the words “on taxable foreign income” immediately after the words “of any tax” in the proviso; and
- (b) deleting subparagraphs (i) and (ii) and substituting therefor with the following new subparagraphs –

“(i) has been assessed in respect of the tax on taxable foreign income or any matter relating to the tax on taxable foreign income; or

(ii) is under audit or investigation in respect of unpaid tax on taxable foreign income or any matter relating to the unpaid tax on taxable foreign income”.

#### 4.7. Kenya Airways

##### **VAT Act, 2013**

(a) Amend the First Schedule to the Act which deals with exempt supplies by -

- (a) including the following item under Part I -- Goods:  
“taxable supplies to the national carrier for both local and international purchases upon approval by a competent authority”; and
- (ii) including the following item under Part II – Services:  
“taxable supplies to the national carrier for both local and international purchases upon approval by a competent authority”.

(b) Amend the Second Schedule to the Act which deals with zero rating in Part A by inserting the following item immediately after item 11 –

“12. The supply of goods or taxable services to the national carrier for both (local and international supplies) upon approval by a competent authority”.

##### **Customs and Excise Act, Cap. 472**

Amend the Third Schedule to the Act by inserting the following new paragraph –

“the supply of goods or taxable services to the national carrier for both local and international supplies upon approval by a competent authority”.

#### 4.8. Federation of Kenya Pharmaceuticals Manufacturers

The federation is content with the passage of the VAT Act, 2013 as it has resulted in savings by local manufacturers of pharmaceutical products which have been passed to the consumers.

4.9. RSM (Eastern African) Consulting Ltd.

**VAT Act, 2013**

That clause 27 of the Bill be amended in paragraph (a) (i) by inserting the following tariff numbers immediately after tariff number 2306.30.00 –  
“2304.00.00 and 2303.30.00”.

This tariff numbers correspond:

2304.00.00 - oil cakes and other solid residues, whether or not ground or in the form of pellets, resulting from extraction of soya beans; and

2303.30.00 – brewing or distilling dregs and waste

Clause 28 of the Bill is amended in paragraph (a) by inserting the following new paragraph immediately after the proposed paragraph 12 –

13. The supply of taxable goods or taxable services to be used exclusively for development and extraction activities of a mining company granted a mining licence in accordance with the Mining Act, upon recommendation of the Cabinet Secretary responsible for mining.

**Income Tax Act, Cap. 470**

Amend the Bill by inserting a new clause 13A immediately after clause 13 which provides as follows:

13A The Second Schedule to the Income Tax Act be amended –

(i) in paragraph 1 by inserting the following new sub-subparagraph after sub-subparagraph (ee) -

“(f) in case referred to in paragraph 5 (1) (h) for any year commencing 1<sup>st</sup> January 2016, five per cent”; and

(ii) in paragraph 5 by inserting the following new sub-subparagraph after sub-subparagraph (f) –

“(g) other buildings used for residential or commercial purposes”.

Amend the Bill by inserting a new clause 15A immediately after clause 15 which provides as follows:

15A. The Ninth Schedule to the Income Tax Act is amended by inserting the word “or a licensee” immediately after the word “contractor”.

Amend the Bill by inserting a new clause 15A immediately after clause 15 which provides as follows:

15A. The Ninth Schedule to the Income Tax Act is amended:

(a) in paragraph 1 by inserting the following new definition in its proper alphabetical sequence –

“reimbursement of expenses” means payment by a subcontractor or a licensee to a subcontractor to reimburse that subcontractor for payments made to a third party on behalf of the contractor or licensee in respect of goods and services which are incidental to the subcontract and would not normally, in the international petroleum and mining industries, be included in the taxable service fee, but does not include a charge for handling or administration”;

(b) in paragraph 16 by inserting the following proviso –

“provided that withholding tax shall not apply to the part of payments for services which represent reimbursable expenses”.

Amend the Bill by inserting a new clause 15A immediately after clause 15 which provides as follows:

15A. The Ninth Schedule to the Income Tax Act is amended:

(a) in paragraph 1 by inserting the following new definition in its proper alphabetical sequence –

“development expenditure” means the cost incurred in assessing the ore body and constructing the production infrastructure once the technical feasibility and commercial viability of the ore body has been established;

(b) in paragraph 5 by inserting the following new paragraph after it –

5A. The licensee shall be allowed a full deduction of development expenditure in the year which it is uncured.

Amend the Second Schedule to the Act –

(a) In paragraph 24 (1) by inserting a new sub-subparagraph (h) immediately after sub-subparagraph (g) as follows –

“(g) on the purchase for machinery used directly in mining operations by a person licensed under the Mining Act”;

(b) In paragraph 24 (2) by inserting a new sub-subparagraph (e) immediately after sub-subparagraph (d) as follows –

“(e)in the case of machinery referred to in subparagraph (1) (h) be equal to one hundred per cent of the capital expenditure”

#### 4.10. Clean Cook stoves Association of Kenya (CCAK)

Clause 23 of the Bill is amended in paragraph (f) by inserting the following definition in the proper alphabetical sequence –

“Clean cook stoves” includes all stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbeques, braziers, gas-rings, plate warmers and similar non-electric domestic appliances which meet the ISO/IWA 11:2012 tier 2-4 for emissions and fuel efficiency as confirmed by Kenya Bureau of Standards.

Clause 27 of the Bill is amended in paragraph (a) (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 for Treasury upon recommendation by the Cabinet Secretary responsible for Energy and Petroleum.

67. Inputs or raw materials locally purchased or imported by manufacturers of clean cook stoves by the Cabinet Secretary for Treasury upon recommendation by the Cabinet Secretary responsible for Energy and Petroleum.

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 with the following tariff numbers.

-Cooking Appliances and Plate Warmers-

7321.11.00 For gas fuel or for both gas and other fuels

7321.12.00 For liquid fuel

7321.19.00 Other, including appliances for solid fuel

- Other Appliances-

7321.81.00 For gas fuel or for both gas and other fuel

7321.82. 00 For liquid fuel

7321.83. 00 Other, including appliances for solid Fuel

7321.90. 00 Parts

#### 4.11. Kenya Union of Savings & Credit Cooperatives Ltd

Clause 45 of the Bill be amended in –

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

#### 4.12. Nairobi Securities Exchange

##### Stamp Duty Act

- (a) Section 64 of the Stamp Duty Act is amended by inserting the following new paragraph immediately after paragraph (d) -  
“(d) shares of co-operative societies duly registered in Kenya”; and
- (b) Section 117 of the Stamp Duty Act is amended by inserting the following new subsection after subsection (1) -  
“(1A) a transfer of shares of a co-operative duly registered in Kenya provided that such a transfer occurs on an automated and transparent electronic platform.”

##### Income Tax Act

Clause 13 of the Bill is amended by deleting paragraph (c) and substituting therefor with the following new paragraph –

“(c) in paragraph (2) –

- (i) by inserting the following new sub-subparagraph after subparagraph (g)(ii) -  
“(iii) in the case of a company conducting business in either the tourism, agriculture, wholesale and retail trade, manufacturing, business process outsourcing, financial services, energy, mining or technology sectors that seeks to list its shares via introduction on the Growth Enterprise Market Segment, twenty per cent for the period of five years commencing immediately after the year of income following the date of such listing”; and

(ii) by inserting a new subparagraph immediately after subparagraph (h) as follows

“(i) in the case of a company that constructed at least one thousand residential units annually, twenty

commencing operations

(b) Clause 45 of the Bill is amended in paragraph (c) by inserting the following subparagraph after subparagraph (ii) –

“(iii) by inserting the words “trade repository” immediately before the words “or authority” in paragraph (f);”

**Public Private Partnerships Act**

Section 2 of the Public Private Partnerships Act is amended in section 2 by inserting the following new definition in its proper alphabetical sequence –

“contracting authority”, means a State department, agency or state

Corporation, but excluding County Government, which intends to have a function undertaken by it performed by a private party;

**5.0. COMMITTEE RECOMMENDATION**

Having received written submission and analyzed the proposals by the shareholders, the Committee has consolidated amendments for further discussions with the stakeholders and the National Treasury in Line with Article 114 for possible introduction into the Bill during the Committee Stage. The amendments are annexed to this report.

SIGNED..........DATE..... 16<sup>th</sup> AUG 2016 .....

**THE HON. NELSON GAICHUHIE, MP**

**VICE CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING AND TRADE**

per cent for that year of income, subject to approval by the Cabinet Secretary responsible for housing”.

(a) Clause 2 of the Bill is amended by inserting the following new definition after the proposed definition of “deemed interest” -

“Social impact bond” and “Green bond” means a fixed income product issued either by the national government, county government or a company to enable capital-raising and investment for new and existing projects with environmental and social benefits;”

(b) Clause 13 of the Bill is amended by inserting the following new paragraph after the proposed paragraph 54 -

“55. Interest on a social impact or green bond.”

#### **Retirement Benefits Act**

Amend the Investment Guidelines to provide the maximum investment for each asset category as follows:

1. Cash and Demand Deposits in institutions licensed under the Banking Act Of the Republic of Kenya. 5%
2. Fixed Deposits, Time Deposits and Certificated of Deposit in institutions licensed under the Banking Act of Kenya. 30%
3. Commercial paper, Corporate agency registered by the rate Bonds, Mortgage Bonds and loan stocks approved by the Capital Markets Authority non listed and other instruments issued by private companies, provided the bond or instrument has been given investment grade rating by a credit rating agency registered by CMA, a collective investment schemes incorporated in Kenya and approved by the CMA reflecting this Category. 30%
4. Preference shares and ordinary shares of Companies quoted in the Kenya and approved by the CMA reflecting this category, to read as:  
Preference shares, ordinary shares and other listed securities quoted on an approved securities exchange and approved by the CMA 70%
5. Kenya, Uganda or Tanzania Governments Securities and infrastructure bonds issued by public institutions and collective investment schemes incorporated in Kenya, Uganda and Tanzania. 90%
6. Unquoted shares of companies’ incorporated in Kenya and collective investment schemes incorporated in Kenya and approved by the CMA reflecting this category. 5%
7. Offshore investments in banks deposits, government securities, quoted equities and rated Corporate Bonds 15%
8. Immovable property in Kenya and units in property Unit Trust Schemes incorporated in Kenya and collective investments schemes incorporated in Kenya and approved by the CMA reflecting this category. 30%
9. Guaranteed Funds. 100%
10. Private Equity and Venture Capital 10%
11. Any other assets (commodities, trade receivables etc.) 10%

#### **Banking Act**

(a) Section 2 of the Banking Act is amended by inserting the following new definition in its proper alphabetical sequence –

“trade repository” means an entity duly incorporated in Kenya under the Companies Act that does not engage in banking either in a core, supplementary or supportive capacity and operates a robust and secure technology platform for receipt, storage, analysis and dissemination of derivatives and other types of data and has acquired a Letter of Comfort from the Central Bank of Kenya before



**ANNEXES**

**ANNEX 1: CONSOLIDATED AMMENDMENTS FROM THE STAKEHOLDERS**

**ANNEX 2: MINUTES**

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

Clean Cookstoves Association of Kenya (CCAK) PROPOSAL	JUSTIFICATION
<p>1. Clause 23 of the Bill is amended in paragraph (f) by inserting the following definition in the proper alphabetical sequence – “Clean cook stoves” includes all stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances which meet the ISO/IWA 11:2012 tier 2-4 for emissions and fuel efficiency as confirmed by Kenya Bureau of Standards.</p>	<p>(a) Kenya through its Second National Communication and Intended Nationally Determined Contributions (INDC) to the United Nations Convention on Climate Change (UNFCCC) shows commitment to the Paris Agreement which was signed in 2016 to reduce its emissions below business as usual levels by 2030; (b) Secondly according to SE4All, second to geothermal energy, clean cooking is the best option to reduce Kenya’s GHG emissions and sustainably address the pressure on its forest reserves; and (c) Only clean cook stoves that meet the ISO/IWA 11:2012 tier 2-4 emissions and fuel efficiency as confirmed by KEBS meet this objective of reducing emissions. Those that do not meet this criterion are therefore disqualified from exemption; taxing such stoves will discourage their use and enhance adoption of clean cook stoves.</p>
<p>2. Clause 27 of the Bill is amended in paragraph (a) (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 for Treasury upon recommendation by the Cabinet Secretary responsible for Energy and Petroleum. 67. Inputs or raw materials locally purchased or imported by manufacturers of clean cook stoves by the Cabinet Secretary for</p>	<p>(a) Already solar equipment, wind power, thermal energy and hydropower have been exempt from VAT. There is also a proposal to exempt LPG. Although the Government reduced import duty on improved cook stoves from 25% to 10%, the impact of this decision is limited as duty is charged on the product value while VAT is charged on the entire consumer price. Further, the reduction on import duty does not affect those who manufacture these cook stoves locally and so local manufacturers do not benefit; (b) Consumers in Kenya face difficulty in meeting theupfront costs of purchasing clean cook stoves. This is why they purchase low priced inefficientstoves over the efficient highly priced ones. The import duty</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>Treasury upon recommendation by the Cabinet Secretary responsible for Energy and Petroleum.</p> <p>68. Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, or iron or steel with the following tariff numbers.</p> <p>-Cooking Appliances and Plate Warmers-</p> <p>7321.11.00 For gas fuel or for both gas and other fuels</p> <p>7321.12.00 For liquid fuel</p> <p>7321.19.00 Other, including appliances for solid fuel</p> <p>- Other Appliances-</p> <p>7321.81.00 For gas fuel or for both gas and other fuel</p> <p>7321.82. 00 For liquid fuel</p> <p>7321.83. 00 Other, including appliances for solid Fuel</p> <p>7321.90. 00 Parts</p>	<p>reduction on stoves alone will be counterproductive if it is not backed by a VAT exemption to enable consumers to meet the upfront purchase costs; and</p> <p>(c) in a 0% VAT scenario, the cost savings to consumers is over 7 billion shillings over a 4 year period (2017-2020) while the opportunity cost to the government will be half a billion shillings. If VAT is waived, this will be an incentive to indirectly inject over 7 billion shillings into the economy. These savings will ultimately have a positive effect on other formal sectors of the economy that fall under the tax net since consumers will have more purchasing power resulting from fuel savings</p>
	<p><b>British American Tobacco Kenya (BAT)</b></p> <p>The introduction of the single tier excise regime through the Excise Duty Act, 2015 is a welcome move and is in line with the best practice on taxation of cigarettes where all cigarettes are taxed at the same rate in a transparent, predictable and easy to administer manner. In addition, this is in line with the government's overall public health policy. This system should,</p>	<p>(a) Simplifies and improves tax collection efficiencies;</p> <p>(b) Enhances reliability and predictability on government excise revenue;</p> <p>(c) Discourages the production and consumption of cheaper cigarettes which negates the objective of increased investment for quality and premium products;</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

<p>therefore, be maintained.</p>	<p>(d) Levels the playing field for both locally produced and imported cigarettes in contribution to the government in excise revenue;                  (e) Mitigates the risk of a price war among industry players as the motivation for setting low retail selling price in order to make saving from a low excise tax base has been removed; and                  (f) Promotes increased investment in quality and premium products.</p>
<p><b>Kenya Oil and Gas Association (KOGA)</b>  <b>VAT on supplies for the oil and gas sector</b>                  Clause 27 of the Bill is amended –                  (a) in paragraph (a) by inserting the following new subparagraph immediately after subparagraph (i) –                  (ia) by deleting paragraph 30 and substituting therefor the following new paragraph –                  30. Taxable supplies, excluding motor vehicles principally designed for the transport of persons or goods other than special purpose motor vehicle under heading no 87.05 required for use in the field, imported or purchased for direct and exclusive use in oil or gas exploration and development, by a company granted oil or gas exploration licence in accordance with a production sharing contract with the Government of Kenya, and in accordance with the provisions of the Petroleum (Exploration and Production) Act (Cap.308) upon recommendation by the Cabinet Secretary responsible for energy; and                  (b) in paragraph (b)(iv) by inserting the following new paragraph immediately after the proposed paragraph 27 –                  28. Taxable services imported or purchased for direct and exclusive use in oil and gas exploration and development, by a company granted oil or gas prospecting license in accordance with a production sharing contract with the Government of Kenya</p>	<p>(a) Pre VAT Act, 2013 goods &amp; services supplied to O&amp;G companies were subject to remission which was similar to zero-rated. The VAT Act, 2013 introduced explicit exemption for goods. However VAT exemption was not extended to services. Services account for approx. 80-90% of the cost base of the Industry. At 16% VAT, this leads to an increase in costs of approx. 13-15%;                  (b) In addition, there is concern that the above provisions are not extended to upstream petroleum development activities where a majority of the costs will be incurred;                  (c) O&amp;G companies are in investment phase and any VAT suffered is therefore a tax on investment. This makes Kenya a more costly jurisdiction for O&amp;G compared to other Regional Countries that provide relief for VAT for O&amp;G companies;                  (d) Finally, the change from zero-rating to exemption means suppliers cannot reclaim any input VAT suffered and any irrecoverable VAT is passed on to O&amp;G companies as an additional cost.</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>under the provisions of the Petroleum (Exploration and Production) Act (Cap.308) upon recommendation by the Cabinet Secretary responsible for energy.</p> <p>OR</p>	
(b)	<p>Clause 28 of the Bill is amended in paragraph (a) by inserting the following new paragraph immediately after the proposed paragraph 12 –</p> <p>13. The supply of goods or taxable services, excluding motor vehicles principally designed for the transport of persons or goods other than special purpose motor vehicle under heading no 87.05 required for use in the field, imported or purchased for direct and exclusive use in oil or gas exploration and development, by a company granted oil or gas exploration licence in accordance with a production sharing contract with the Government of Kenya and in accordance with the provisions of Petroleum (Exploration and Production) Act (Cap.308) upon recommendation by the Cabinet Secretary responsible for energy.</p>	
2.	<p><b>Capital Gains Tax reinvestment relief</b>  <b>NEW CLAUSE</b>          That the following new clause be inserted immediately after clause 4 –</p> <p>4A. Section 15 of the Income Tax Act is amended in subsection (5A) by inserting the following new paragraph after paragraph (d) –</p> <p>(e) subject to the recommendation of the Cabinet Secretary responsible for energy, where and to the extent that, the consideration received from the disposal of an interest in a person, is wholly and exclusively utilised in a contract area by a contractor in undertaking petroleum operations approved under a petroleum agreement, within a period of twelve months prior to and thirty six months after the disposal of the interest in a person</p>	<p>In order to develop the oil &amp; gas industry, Capital Gains Tax (CGT) policy should provide for an incentive for funds earned from the disposal of O&amp;G interests in Kenya to be reinvested in the country's upstream petroleum sector. This is particularly important as Kenya is competing for funds with other regional countries that have proven commercial reserves of O&amp;G and therefore needs to ensure its maximizes investment in O&amp;G in Kenya.</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

<p>occurs or such other longer periods as will be approved by the Commissioner, then the net gain chargeable to tax shall be reduced by the following amount:</p> <p>NG x RP/P Where –  NG - net gain attributable to Kenya as determined under this section after applying indexation allowance;</p> <p>RP – Consideration utilised in the contract area towards expenditure approved under a petroleum agreement ;</p> <p>P - Amount or the value of consideration attributable to immovable property in Kenya.</p>	
<p>3. <b>Capital Gains Tax rate of tax NEW CLAUSE</b>  THAT the following new clause be inserted immediately after clause 5 –  5A. Section 34 of the Income Tax Act is amended in subsection (1) by deleting paragraph (i) and substituting therefor with the following new paragraph –  (i) tax upon the net gain derived on the disposal of an interest in a person subject to tax under section 3(2) (g) shall be charged at the rate specified in the Ninth Schedule.</p> <p><b>NEW CLAUSE</b>  THAT the following new clause be inserted immediately after clause 15 –  15A. The Ninth Schedule of the Income Tax is amended by inserting the following new paragraph after paragraph 7 –  7A. Notwithstanding any contrary provisions, tax upon the net gain derived on the disposal of an interest in a person subject to tax under section 3(2) (g) shall be charged at the rate applicable</p>	<p>The Finance Act 2014 introduced a tax on disposal (“Capital Gains Tax” (CGT)) at the rate of 30% / 37.5% for Kenyan companies and branches of foreign companies respectively. This rate is significantly higher to the general rate applied to the other industries in Kenya of 5%. The rate of CGT for O&amp;G should be aligned with that of other industries to achieve tax equity.</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

<p>4.</p>	<p>under the 8th schedule and shall not be subject to further taxation.</p> <p><b>Capital gains tax cost basis</b>  <b>NEW CLAUSE</b>  <b>THAT</b> the following new clause be inserted immediately after clause 2 –          2A. Section 3 of the Income Tax Act is amended in subsection (3) (c) by –          (a) deleting subparagraph (ii) and substituting thereof the following new subparagraph –          (ii) “net gain”, in relation to the disposal of an interest in a person, means the consideration for the disposal reduced by the adjusted cost of the interest; and          (b) deleting the word “cost” appearing immediately before the word “consideration” in subparagraph (iii) and substituting therefor the words “adjusted cost”.</p> <p><b>NEW CLAUSE</b>  <b>THAT</b> the following new clause be inserted immediately after clause 15 –          15A. The Ninth Schedule of the Income Tax is amended in paragraph 1 by deleting the definition of “cost” and substituting therefor the following new definition –          “adjusted cost” in relation to an interest in a person, a mining or petroleum right, or mining or petroleum information means –          (i) the total consideration given for the acquisition of the interest, right or information, including the fair market value of any amount given in kind determined at the time the amount is given;          (ii) the amount of any expenditure incurred on the interest,</p>	<p>(a) The definition of “cost” for share disposals appears to limit the costs incurred to consideration given for the acquisition of the interest and does not include incidental costs and post acquisition costs;          (b) All costs incurred in development of the asset including incidental costs should be deductible similar to deductions allowed for other industries; and          (c) Uncertainty on whether all allowable costs would be taken into consideration when computing a net gain would adversely impact M&amp;A activity as buyers and sellers require economic certainty in order to proceed with transactions.</p>
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MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

<p>right, or information at any time after its acquisition by or on behalf of the transferor for the purpose of enhancing or preserving the value of the interest, right, or information, at the time of the disposal;</p> <p>(iii) the amount of expenditure wholly and exclusively incurred at any time after the acquisition of the interest, right or information by the transferor establishing, preserving or defending title to, or right over, the interest, right or information; and</p> <p>(iv) the amount of incidental costs to the transferor of acquiring the interest, right or information.</p>	
<p>5. <b>Capital gains tax - tax neutral transactions</b> <b>NEW CLAUSE</b> That the following new clause be inserted immediately after clause 4 – 4A. Section 15 of the Income Tax Act is amended in subsection (5A) by inserting the following new paragraphs after paragraph (e) – (f) Notwithstanding anything in this section and subject to recommendation from the Cabinet Secretary for the time being responsible for energy, no net gain shall be included in the income chargeable to tax on the disposal of an interest in a person that is necessitated by, and takes place pursuant to, a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution, reconstruction, reorganisation or restructuring of corporate identity involving one or more group companies (to the extent otherwise permitted by law);</p> <p>The recommendation of the Cabinet Secretary shall not be</p>	<p>(a) Intra-group transactions that are tax neutral are not taxable for all other Industries but taxable for O&amp;G industry;</p> <p>(b) The current rules will make it difficult for companies and the industry generally to engage in normal organisation and reorganisation practices and would lead to uncertainty for companies who may wish to enter the sector in Kenya as post transaction they may wish to reorganise their holdings.</p>



MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>unreasonably withheld and shall be granted or refused within thirty days of receipt by the Cabinet Secretary of notice from the contractor that it intends to enter into such a transaction. Where the Cabinet Secretary fails to communicate his or her decision, in respect of the notice given within the stipulated period, the recommendation shall be deemed to have been granted.</p>	
<p>6.</p>	<p><b>Capital gains tax –indexation relief</b>  <b>NEW CLAUSE</b>          That the following new clause be inserted immediately after clause 4 –          4A. Section 15 of the Income Tax Act is amended in subsection (5A) by inserting the following new paragraphs after paragraph (b) –          (ba) The amount of net gain shall be adjusted by an indexation allowance from 1 January 2015 –          (i) to give the gain chargeable to tax for the purpose of this Act; or          (ii) if the indexation allowance equals or exceeds the net gain, so as to extinguish it (in which case the disposal shall be one on which, after taking account of the indexation allowance, neither a gain nor a loss accrues).          Notwithstanding anything to the contrary, sub-section (ba) shall not apply to a disposal on which a loss accrues.          (d) (i) The indexation allowance is the aggregate of the indexed rise in each item of relevant adjusted cost; and, in relation to any such item of cost, the indexed rise is a sum produced by multiplying the amount of that item by a figure expressed as a decimal and determined, subject to subparagraphs (ii), (iii) and (iv) below, by the formula—          (RD–RI)/RI</p>	<p>(a) Given the long life cycle of the sector and the considerable sums required for investment the cost base should be protected against inflation;          (b) This is available for other industries in Kenya except oil &amp; gas. Other countries also have similar provisions e.g. South Africa, Ethiopia, UK and others;          (c) Indexation protects the base investment from the impact of inflation over time and therefore results in fair computation of net gain.</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

<p>where—</p> <p>RD is the retail prices index for the month and year in which the disposal occurs; and</p> <p>RI is the retail prices index for January 2015 or the month and year in which the expenditure was incurred, whichever is the later.</p> <p>(ii) if, in relation to any item of adjusted costs, RD, as defined in subsection (1) above, is equal to or less than RI, as so defined, the indexed rise in that item is nil.</p> <p>(iii) if, in relation to any item of adjusted cost, the figure determined in accordance with the formula in subsection (1) above would, apart from this subsection, be a figure having more than 3 decimal places, it shall be rounded to the nearest 3 decimal place.</p> <p>(iv) the Commissioner shall issue guidance on the retail price index that will be adopted for the purpose of applying indexation allowance.</p>	
<p>7. <b>Withholding tax on natural resource income</b> <b>NEW CLAUSE</b> THAT the following new clause be inserted immediately after clause 2 – 2A. Section 3 of the Income Tax Act is amended in subsection (2) by inserting the following proviso immediately after paragraph (c) – Notwithstanding any other provision of this Act, income is not chargeable to tax under subsection (2) (h) where, and to the extent</p>	<p>(a) The Finance Act 2014 introduced WHT onNRI at 5% &amp;20% for residents and non-residents respectively. From the wording of the legislation, it is unclear what type of transactions NRI is designed to tax and could be construed to refer to sale of hydrocarbons and/or transfer of interest in a licence, which would result in double taxation;</p> <p>(b) From consultation with NT and KRA, the sector's understanding is that NRI is applicable to deferred consideration or overriding royalty type transaction;</p> <p>(c) The sector requires clarity and stability in the law to</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

8.	<p>that, it is chargeable to tax under any other provision of this Act.</p> <p><b>WHT on reimbursement of costs incurred by sub-contractors and mobilisation or demobilisation costs</b></p> <p><b>NEW CLAUSE</b>  <b>THAT</b> the following new clause be inserted immediately after clause 15 –  15A. The Part IV of the Ninth Schedule of the Income Tax be amended in Paragraph 15 –</p> <p>(a) by inserting the following proviso immediately after item (3);</p> <p>(3A) The rate of withholding tax applicable under paragraph (2) shall be applied to the service fee but excluding –</p> <p>(i) Moneys actually paid by a licensee or contractor to reimburse the non-resident subcontractor for the cost of mobilization and demobilization; and</p> <p>(ii) Reimbursement of expenses.</p> <p>(B) Payment for mobilization and demobilization shall not exceed the amounts normally paid in the international petroleum or mining industry, having regard to the circumstances of the contract, and shall not be at a level calculated to transfer a part of the taxable service fee to the non-taxable moneys referred to in subparagraph (3)(A).</p> <p>In this Part –  “mobilization and demobilization” means the movement of men and equipment to Kenya prior to operating, and from Kenya after completion thereof, including the movement of men and equipment in Kenya during operations provided the</p>	<p>facilitate investment decision making.</p> <p>(a) The Finance Act, 2014 introduced WHT on the reimbursement of expenditure and mobilisation &amp; demobilisation costs;</p> <p>(b) It is common industry practice for suppliers of E&amp;P companies to subcontract out specific activities which is a key enabler for local content;</p> <p>(c) Such costs are passed to the E&amp;P companies at cost as a reimbursement and unusual to subject such costs to WHT;</p> <p>(d) Imposing WHT on third party costs increases the cost of sub-contracting which in turn discourages local content.</p>
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MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

<p>movement is not to a third party;</p> <p>“reimbursement of expenses” means payment by a contractor or licensee to a subcontractor to reimburse that subcontractor for payments made to a third party on behalf of the contractor or licensee in respect of goods and services which are incidental to the subcontract and would not normally, in the international petroleum or mining industry, be included in the taxable service fee, but does not include a charge for handling or administration.</p>	
<p>9</p> <p><b>Exemption of meals and other subsistence provided in remote locations from PAYE NEW CLAUSE</b></p> <p>THAT the following new clause be inserted immediately after clause 2 –</p> <p>2A. Section 5 of the Income Tax Act is amended in subsection (4) by inserting the following new paragraph immediately after paragraph(f)-</p> <p>(fa)The value of meals and other amenities provided to employees and independent contractors directly by the employer or by a third party on behalf of the employer who is a registered taxpayer at remote site locations for upstream exploration and production operations on a temporary basis;</p> <p>OR</p> <p>increase the threshold for non-taxable meals from current Kshs. 48,000 which is too low.</p>	<p>(a) The KRA has recently issued a notice to IOCsproviding that meals to employees working at upstream remote site camps are a benefit and therefore subject to PAYE under the ITA;</p> <p>(b) E&amp;P activities are typically carried out in remote locations both onshore and offshore with harsh climates, difficult to live in environments and far from established infrastructure;</p> <p>(c) O&amp;G companies have no choice but to build remote site camps or use offshore drilling rigs to provide both employees and contractors onsite accommodation, meals, laundry and refreshment among other amenities.</p>
<p>10.</p> <p><b>Importation issues - Exemption to Railway Development Levy (RDL)</b></p> <p><b>Importation issues – Import Declaration Fees</b></p> <p>1. <b>NEW CLAUSE</b></p> <p>THAT the following new clause be inserted after clause 59 –</p> <p>60. The Customs and Excise Act is amended in section 117A</p>	<p>(a) Railway Development Levy (RDL) was introduced via the Finance Act 2013 at 1.5% of the customs value of imports;</p> <p>(b) Imports by O&amp;G companies are exempt from duties under the provision of the EACCMA and the PSC. Duties as defined in the PSC and EACCMA to include levies such as RDL Petroleum operations require significant imports</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>(6) by inserting the following new paragraph immediately after paragraph (c)—          (d) for the direct and exclusive use in oil exploration and development by a company granted exploration license in accordance with production sharing contracts under the provisions of Petroleum (Exploration and Production) Act (Cap. 308), upon recommendation by the Cabinet Secretary responsible for energy;          And          2. Exclude IOCs from the process of obtaining waivers prior to relief from IDF similar to other import taxes.</p>	<p>which are primarily acquired through service contracts and are re-exported on completion of the service;          (c) The imposition of RDL results in increase in costs.          (d) IDF is relieved to the extent waivers are obtained prior to the importation of the goods. The process sometimes delays inevitably leading to the payment of IDF;</p>
	<p><b>Kenya Union of Savings &amp; Credit Co-operatives Ltd (KUSCCO LTD)</b></p> <p>Clause 45 of the Bill be amended in –          (a) paragraph (a) by inserting the words “Co-operative Societies Act, Cap. 490” immediately after the words “SACCO Societies Act, 2008”;          (b) paragraph (c) (i) by inserting the words “Co-operative Societies Act, Cap. 490” immediately after the words “SACCO Societies Act, 2008”; and          (c) paragraph (c) (ii) by inserting the following new subparagraph immediately after subparagraph (da) –          “(daa) institutions licensed under the Co-operative Societies Act, Cap. 490”.</p>	<p>All SACCOs including those that are not registered under the SACCO Societies Act, 2008 engage in providing financial services. They too need to participate in credit information sharing.</p>
<p>1.</p>	<p><b>KENYA AIRWAYS (KQ)</b>  <b>VAT Act, 2013</b>          (a) Amend the First Schedule to the Act which deals with exempt supplies by -          (a) including the following item under Part I – Goods:          “taxable supplies to the national carrier for both local and international purchases upon approval by a competent authority”; and          (ii) including the following item under Part II – Services:</p>	<p>(1) Aircraft parts and accessories are exempt from duties under the Fifth Schedule of the East African Community Customs Management Act (EACCMA), 2004. In addition, Part I of the First Schedule to the VAT Act, 2013 has specifically exempted aircraft spares from VAT. However, Kenya Airways still pays import duty and VAT on some aircraft related spare parts that are not specifically included in the EACCMA, 2004 and VAT Act, 2013.</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>“taxable supplies to the national carrier for both local and international purchases upon approval by a competent authority”.</p>	<p>These amendments will allow for exemption of from VAT and import duties on aircraft spare parts as provided for under the EACCMA which is also in line with OECD AND ICAO policies.</p> <p>(2) Kenya Airways is undergoing cash flow challenges yet it spends over Kshs. 100 million on aircraft related imports which it finances by borrowing. It later claims refunds for VAT but this is a slow and lengthy process. As the government does not lose out on any tax revenue, it is best to exempt the company from payment of VAT.</p>
	<p>(b) Amend the Second Schedule to the Act which deals with zero rating in Part A by inserting the following item immediately after item 11 –</p> <p>“12. The supply of goods or taxable services to the national carrier for both (local and international supplies) upon approval by a competent authority”.</p>	
2.	<p><b>Customs and Excise Act, Cap. 472</b></p> <p>Amend the Third Schedule to the Act by inserting the following new paragraph –</p> <p>“the supply of goods or taxable services to the national carrier for both local and international supplies upon approval by a competent authority”.</p>	
	<p><b>Anjarwalla&amp; Khanna (ALN)</b></p>	
1.	<p><b>Capital gains tax</b></p> <p>Amend the proviso to provide as follows:</p> <p>“No gain or loss shall be included in the computation of income under section (3) (2) (f) in the case of a transfer of property in exchange for other property that is necessitated by, and takes place pursuant to, a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution, reconstruction or similar restructuring of corporate identity involving one or more associated companies (to the</p>	<p>(a) Currently a transfer of property that is undertaken as a result of a corporate restructuring such as amalgamation is exempt from CGT if undertaken in the public interest with the approval of the Cabinet Secretary. This is impractical for most entities;</p> <p>(b) Corporate re-organisations which do not involve a transfer of assets outside the group do not involve loss of revenue to the government as they do not involve a cash consideration;</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>extent otherwise permitted by law) upon approval by the Commissioner; but following that exchange, the cost to the transferor of the property acquired by him shall be the cost of the property transferred, except that the cost to a company of property received by it in exchange for the issue of its own shares or debentures shall be the cost to the issue of the property received.</p> <p>Where any such exemption has been allowed in connection with the acquisition by the transferor company of property in another company and the transferee company within a period of two years from the date of grant of the exemption, ceases, otherwise than in consequence of reconstruction, amalgamation or liquidation, to be the beneficial owner of the property so acquired, the exemption shall be deemed not to have allowed and an amount equal to the capital gains tax remitted shall become payable forthwith, and shall be recoverable from the transferor company as a debt due to the Government, together with penalties and interest thereon from the date the capital gains tax would have become payable.</p> <p>Provided that this exemption shall only be applicable where the criteria under section 95 or 96 of the Stamp Duty Act have been fulfilled.</p>	<p>(c) Similar internal group company reorganisations are exempt from stamp duty under sections 95 and 96 of the Stamp Duty Act; and</p> <p>(d) A CGT exemption would conform to international best practice and the Companies Act, 2015 which allows for sophisticated modes of corporate restructuring such as share buy backs.</p>
<p>2.</p>	<p>Amend clause 14 (c) of the Bill to:</p> <p>(i) define "unit" further by providing its size in terms of square metres and provide that the rental space ought to be a building occupied or capable of being occupied as a residence and specifically not including a hotel or holiday accommodation; and</p> <p>(ii) provide clarity on which accounting period the real estate developers would start enjoying the concessional rate of 20%. They propose that the 20% rate be applicable from the financial year in which the Cabinet Secretary responsible for Housing approves the housing development, provided the construction is</p>	<p>The definition of unit is vague and needs further clarity.</p> <p>Most developments take between 2-3 years to complete. The corporate tax rate is applicable on an annual basis for a development in excess of 1000 residential units and thus the need for clarity on when the real estate agents would start to benefit is important.</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	commenced within a specific duration of time (for example 6 months).	
3.(a)	<p><b>Taxation regime in betting, gaming and lotteries industry</b></p> <p>Amend the Income Tax Act with regard to the taxation of winning by punters or players as follows:</p> <p>(a) Clarity be provided on whether the 7.5% withholding tax is a first and final tax on the punter or player, failing which, an inclusion of such winnings as a specified source of income under section 15 (7) (e);</p> <p>(b) Amend paragraphs (3) (m) and (5) (j) of Head B of the Third Schedule to make reference to “gross winnings” paid by bookmakers to punters as opposed to the current “gross profit”;</p> <p>(c) With reference to the size of winnings paid by bookmakers to punters, the law should allow for a different compliance mechanism for a bookmaker to deduct and remit the withholding tax due;</p>	<p>Currently, a withholding tax certificate is generated by the bookmaker for each winning, which presents administrative difficulties. They propose that the bookmaker is allowed to file one withholding tax return aggregating all the tax deducted in the particular month to which the withholding tax payment relates.</p>
(b)	<p>Amend the Betting, Lotteries and Gaming Act to provide the application of one WHT rate for all winnings from betting, gaming and lotteries to simplify tax compliance.</p>	<p>The Betting, Lotteries and Gaming Act, Cap. 131 has different definitions for betting, gaming and lottery. Winning paid by a bookmaker to a punter to which 7.5% WHT is applicable could also fall within the definition of betting to which 20% WHT is applicable.</p>
4.	<p>Amend clause 30 of the Bill in the proposed new section 15A by inserting the words “being a person who controls the non-resident’s affairs in Kenya including a manager of the non-resident’s business” immediately after the words “tax representative” where it second appears in subsection (2).</p>	<p>This is to restrict the Commissioner’s choice to a person well acquainted with the non-resident’s place for tax purposes.</p>
5.	<p>Delete clause 34 of the Bill.</p>	<p>This provision is very broad and may be abused by the Commissioner as it provides a leeway for the Commissioner to demand for any information including information on third parties which may not be related to ascertaining the tax liability of a</p>



MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>6. Amend clause 36 of the Bill in the proviso to the proposed new section 37B by -</p> <p>(a) inserting the words “on taxable foreign income” immediately after the words “of any tax” in the proviso; and</p> <p>(b) deleting subparagraphs (i) and (ii) and substituting therefor with the following new subparagraphs –</p> <p>“(i) has been assessed in respect of the tax on taxable foreign income or any matter relating to the tax on taxable foreign income; or</p> <p>(ii) is under audit or investigation in respect of unpaid tax on taxable foreign income or any matter relating to the unpaid tax on taxable foreign income”.</p>	<p>person. Furthermore, section 59 of the Tax Procedures Act already grants the Commissioner powers to demand for information from any person where he requires the information to ascertain the tax liability of a person.</p> <p>The proposed amendment seeks to grant an amnesty in respect of all foreign income which is taxable in Kenya but has not been declared in Kenya. It may not achieve its objectives as it makes the amnesty inapplicable to a tax payer who has been assessed in respect of the tax or who is under investigation in respect of any undisclosed income. For the proposal to be effective, it should be specific and make reference to foreign income which is taxable in Kenya.</p>
	<p><b>RSM (Eastern Africa) Consulting Ltd (RSM)</b></p>	
<p>1.(a)</p>	<p><b>VAT Act, 2013</b></p> <p>That clause 27 of the Bill be amended in paragraph (a) (i) by inserting the following tariff numbers immediately after tariff number 2306.30.00 –</p> <p>“2304.00.00 and 2303.30.00”.</p> <p>This tariff numbers correspond:</p> <p>2304.00.00 - oil cakes and other solid residues, whether or not ground or in the form of pellets, resulting from extraction of soya beans; and</p> <p>2303.30.00 – brewing or distilling dregs and waste</p>	<p>Animal feeds are already exempt from VAT. The Cabinet Secretary also aimed to exempt the major raw materials from VAT but left out the proposed items.</p>
<p>(b)</p>	<p>Clause 28 of the Bill is amended in paragraph (a) by inserting the following new paragraph immediately after the proposed paragraph 12 –</p>	<p>(a) Supplies to mining companies involved in prospecting are exempt and will become vatiable once the companies reach development stage;</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>13. The supply of taxable goods or taxable services to be used exclusively for development and extraction activities of a mining company granted a mining licence in accordance with the Mining Act, upon recommendation of the Cabinet Secretary responsible for mining.</p>	<p>(b) Mining companies engaged in extraction will be largely in VAT refundable situations given that their supplies are exported;</p> <p>(c) Zero-rating supplies to mining companies involved in the development and extraction phases (as opposed to prospecting) will prevent a situation of always applying for refunds and simplify the VAT refund process.</p>
<p>2. (a)</p>	<p><b>Income Tax Act, Cap. 470</b></p> <p>Amend the Bill by inserting a new clause 13A immediately after clause 13 which provides as follows:</p> <p>13A The Second Schedule to the Income Tax Act be amended –</p> <p>(i) in paragraph 1 by inserting the following new sub-paragraph after sub-paragraph (ee) -</p> <p>“(f) in case referred to in paragraph 5 (1) (h) for any year commencing 1<sup>st</sup> January 2016, five per cent”; and</p> <p>(ii) in paragraph 5 by inserting the following new sub-paragraph after sub-paragraph (f) –</p> <p>“(g) other buildings used for residential or commercial purposes”.</p>	<p>Capital allowances have only been provided for buildings which are used for manufacture, agriculture, hotel, transportation, hostels or residential buildings in a planned development area approved by the Cabinet Secretary or commercial buildings where social infrastructure is provided. The same has not been availed to other residential or commercial buildings yet they are major investments. A 5% IBA for residential and commercial buildings which do not enjoy other capital allowances would be a good incentive to investors.</p>
<p>(b)</p>	<p>Amend the Bill by inserting a new clause 15A immediately after clause 15 which provides as follows:</p> <p>15A. The Ninth Schedule to the Income Tax Act is amended by inserting the word “or a licensee” immediately after the word “contractor”.</p>	<p>Withholding tax rate on management and professional fees for the petroleum companies is 12.5% and for mining companies is 20%. This proposal would ensure uniformity and fairness in the treatment of the two sectors which are similar in nature and operations.</p>
<p>(c)</p>	<p>Amend the Bill by inserting a new clause 15A immediately after clause 15 which provides as follows:</p> <p>15A. The Ninth Schedule to the Income Tax Act is amended:</p> <p>(a) in paragraph 1 by inserting the following new definition in its proper alphabetical sequence –</p> <p>“reimbursement of expenses” means payment by a subcontractor or a licensee to a subcontractor to reimburse that subcontractor for payments made to a third party on behalf of the contractor or</p>	<p>WHT was not chargeable on actual reimbursable expenses incurred by service providers till the Ninth Schedule was revised in 2014 with the express exclusion from charge of withholding tax. This has posed additional burden to the sectors because the market practice is that sub-contractors and foreign service providers are paid gross amounts and the tax withheld becomes an additional cost in Kenya. The principle of withholding tax is that it should apply only to services and not reimbursables.</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>licensee in respect of goods and services which are incidental to the subcontract and would not normally, in the international petroleum and mining industries, be included in the taxable service fee, but does not include a charge for handling or administration”;</p> <p>(b) in paragraph 16 by inserting the following proviso – “provided that withholding tax shall not apply to the part of payments for services which represent reimbursable expenses”.</p>	
(d)	<p>Amend the Bill by inserting a new clause 15A immediately after clause 15 which provides as follows:</p> <p>15A. The Ninth Schedule to the Income Tax Act is amended:</p> <p>(a) in paragraph 1 by inserting the following new definition in its proper alphabetical sequence – “development expenditure” means the cost incurred in assessing the ore body and constructing the production infrastructure once the technical feasibility and commercial viability of the ore body has been established;</p> <p>(b) in paragraph 5 by inserting the following new paragraph after it –</p> <p>5A. The licensee shall be allowed a full deduction of development expenditure in the year which it is incurred.</p>	<p>(a) The Ninth Schedule caters for prospecting and extraction expenditure but there are no specific provisions for the write off of development expenditure which is incurred in the period between prospecting and extraction, and includes both capital and revenue expenditure incurred during the mine development stage;</p> <p>(b) This expenditure should be provided for and should be allowed in full in the year in which it occurs.</p>
(e)	<p>Amend the Second Schedule to the Act –</p> <p>(a) In paragraph 24 (1) by inserting a new sub-subparagraph (h) immediately after sub-subparagraph (g) as follows – “(g) on the purchase for machinery used directly in mining operations by a person licensed under the Mining Act”;</p> <p>(b) In paragraph 24 (2) by inserting a new sub-subparagraph (e) immediately after sub-subparagraph (d) as follows – “(e) in the case of machinery referred to in subparagraph (1) (h) be equal to one hundred per cent of the capital expenditure”</p>	<p>(a) While the rate of depreciation for machinery as specified in Part II of the Second Schedule has been proposed at 100% during prospecting phase, no specific rate has been proposed in the Ninth Schedule during the extraction phase which means that the default rates prescribed in the Second Schedule apply;</p> <p>(b) These rates are 37.5% for heavy vehicles, 30% for computer hardware, 25% for saloon cars and 12.5% for machinery, furniture and fittings on a reducing balance basis;</p> <p>(c) These rates are low for mining companies.</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

Institute of Certified Public Accountants of Kenya (ICPAK)		
Income Tax Act, Cap. 470		
1.	Amend section 7A by – (a) inserting the following new paragraph immediately after paragraph (d) in subsection (3) – “In case of tax incentives granted under this Act, one shilling for every shilling of tax incentive granted multiplied by the tax rate”.  (b) inserting the following new subsection immediately after subsection (6)- “(6a) If dividends have been declared out of gains taxed under section 3 (2) (f), compensating tax shall not apply”.	(1) Section 7A should be amended to give a deemed tax credit arising from tax incentives granted under the Income Tax Act. Compensating tax on investment allowances amounts to claw back of tax incentives granted under the Income Tax Act.  This is to avoid double taxation of capital gains on distribution of dividends. Compensating tax was introduced to act as a safeguard against companies making perpetual losses and still distribute dividends.  While section 34 (1) (j) sets the CGT rate at 5% as a final tax, there have been no attempts to amend section 7A of the Income Tax Act dealing with Dividend Tax Account and Compensating Tax. This means that where a company (as opposed to an individual) sells a capital asset and pays capital gains tax at a rate of 5%, it will still be required to pay an additional 25% compensating tax when it declares such a gain as a dividend.  (2) Increasing the tax deductible threshold for contributions to pension Schemes A recent World Bank report has noted that Kenya’s savings rates compared to the country’s disposable income has remained at below 15 per cent over the past decade and are indeed declining. Pension thresholds have not been increased for the last 5-6 years. Increasing the pension thresholds will: a) Mobilize savings for infrastructure development; and b) Ensure that the ageing population will have sufficient funds at retirement.
2.	Amend Section 22A to increase the tax deductible threshold for contributions to three hundred and sixty thousand.	

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

3.	Delete section 54 and paragraph 11 of the Income Tax (Withholding Tax) Rules, 2001.	<p>(3) Harmonizing tax legislation with administrative developments i.e. I-tax.</p> <p>With the administrative requirement to pay tax and file returns on I- Tax, it has become unclear whether certain tax provisions are useful like:</p> <ul style="list-style-type: none"> <li>i. Section 54 - the requirement to submit audited accounts,</li> <li>ii. Paragraph 11 of the Income Tax (Withholding Tax) Rules, 2001- the requirement to submit annual withholding tax return.</li> </ul> <p>This amendment will provide certainty on tax compliance</p>
4.	Amend paragraph 13 (1) of the Eighth Schedule by inserting the following words immediately after the words “public interest” - “or to have a legal and economic benefit where the organisations have not been involved in restructuring for the last five years”.	<p>(4) To achieve consistency with the Stamp Duty Act. The aim of CGT is to tax realized gains on sale. The Eighth Schedule therefore needs to be amended to allow for internal reorganization where the ultimate ownership of the group does not change.</p> <p>For consistent application, the exemption should mirror the provisions of section 96 of the Stamp Duty Act, Cap. 480 which exempts transfers between associated companies from stamp duty.</p> <p>Section 96 (3) (b) of the Stamp Duty Act limits the exemption of transfers between associated companies to transfers whose effect thereof is to convey or transfer a beneficial interest in property from one company with limited liability (hereinafter called the transferor) to another such company (hereinafter called the transferee) and that either—</p> <ul style="list-style-type: none"> <li>i. one of such companies is beneficial owner of not less than ninety per centum of the issued share capital of the other company; or</li> <li>ii. not less than ninety per centum of the issued share capital of each of the companies is in the beneficial ownership of a third company with limited liability.</li> </ul>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	Tax Procedures Act, No. 29 of 2015	
<p>1. Introduce Voluntary Disclosure Programme(VDP) to be designed in such a way that the Kenya Revenue Authority (KRA) is in a position to accord penalty treatment for first time voluntary disclosures as follows:</p> <p><b>Types of Voluntary Disclosure</b></p> <p><b>Penalty and Interest treatment</b> Timely voluntary disclosure of penalty interest. made within a grace period of 3 years from the statutory filing date.</p> <p>Voluntary disclosure made after the grace period of 3 years.</p> <p>The VDP should be taxpayer initiated and made before the taxpayer receives:</p> <p>a) A query from KRA or</p> <p>b) A notification from KRA of the commencement of an audit or investigation.</p> <p>For a taxpayer who has already received a query or is already under a KRA audit or investigation, in order to qualify for reduced penalties, the voluntary disclosure must not be directly related to the scope of query, audit or investigation.</p> <p>Second time repeat offenders can only be entitled to 40% waiver if the disclosure was similar to the previous one. Thereafter no waiver will be granted.</p>	<p>(1) Voluntary Disclosure Programme (VDP)</p> <p>The objective of the VDP is to encourage taxpayers who have made errors in their tax matters due to ignorance or negligence, and without wilful intent to evade taxes, to come forward and inform the revenue authority on voluntary basis.</p> <p>A voluntary disclosure under the VDP is one which is timely, accurate, complete and self-initiated by the taxpayer. The taxpayer is also expected to cooperate fully with the revenue authority. Under the VDP, the voluntary disclosure would be considered self-initiated and timely if:</p> <ul style="list-style-type: none"> <li>• It is made before the revenue authority queries the taxpayer in relation to his tax assessment;</li> <li>• It is made before the taxpayer receives notification from the revenue authority in respect of the commencement of an audit or an investigation; and</li> <li>• For cases already under revenue authority's query, audit or investigation, the disclosure must not be within the immediate scope of the query, audit or investigation.</li> </ul> <p>This will encourage taxpayers to come forward and declare their tax liabilities under the programme.</p>	

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

2.	<p>Amend section 46 by introducing a new subsection (3) which provides as follows -  “(3) When a taxpayer has tax recoverable or tax losses that are not fully exhausted in relation to a business carried on by the taxpayer and the taxpayer has transferred all or some of the assets of the business to a related person (referred to as the transferee) the transferee shall be entitled to utilize the tax recoverable or tax losses of the transferor subject to the transfer agreement”.</p>	<p>(2) This is to enhance equality as the Act indicates that where a transferor, who has a tax liability transfers all or some of the assets of the business to a related person (transferee), the transferee shall be liable for the tax liability (transferred liability). This is a good move save for the fact that it fails to recognize a transfer of tax losses and tax recoverable in a similar transaction.</p>
3.	<p>Delete Section 48 and replace with the following new:  “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 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”.</p>	<p>(3) This is to enhance fairness as subsection (1) of section 48 imposes late payment interest from the date the refund was erroneously paid in addition to the tax paid in error. The imposition of the penalty from the date of refund is punitive. Please note that the Commissioner in some cases will audit the refund before funds are released and as such the consequence of the error should not be borne by tax payer.   Such a provision would be appropriate if the tax payer fraudulently claims for refund of tax.</p>
4.	<p>Amendment of section 89 as follows:  (a) provide for remission of interest under subsection (6) by –  (i) inserting the words “or interest” immediately after the word penalty where it first appears; and  (ii) inserting the words “and interest” immediately after the word penalty where it second appears;  (b) delete subsection (7) and substitute it with the following new subsection 7 –  “(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</p>	<p>(4) This is to give the Commissioner discretion in case of difficulty of collection of interest. Section 89 (6) allows for application to the Commissioner for waiver of penalty but excludes remission of interest.</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	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.	
5.	The Second Schedule to Act be amended by – (a) deleting section 35 (6B) and 37 (6) of the Income Tax Act;  (b) deleting section 55 of the Income Tax Act; and  (c) deleting section 96 of the Income Tax Act.	5(a) The said sections provide for procedure of appealing to the Local Committee in relation to tax assessment on withholding tax and employees' taxes respectively. The Local Committee has since been replaced with the Tax Appeals Tribunal and therefore, there is need to harmonise the Income Tax Act with the Tax Appeals Tribunal Act.  Moreover, the said provisions conflict with section 52 of the TPA in the sense that they require a tax payer who is aggrieved with the Commissioner's decision on imposition of a penalty, to pay the tax in dispute and the penalty thereon before appealing against the assessment. There is no such requirement under the TPA. (b) This conflicts with provisions under section 23 of the TPA, especially in regard to the period of retaining of records. Section 23 of the TPA indicates 5 years while section 55 of the ITA indicates 10 years. (c) The provisions therein are well taken care of under section 42 of the TPA.
	<b>Kenya Information and Communication Act, Cap. 411A</b>	
	Amend section 27A of the Act to include the provision that subscribers should provide PIN certificates to the telecommunication operators for registration.	This is to widen the tax bracket. Section 27A of the Act requires SIM cards to be registered by telecommunication operators. However, the subscribers are not required to furnish PIN certificates to the telecommunication operators.
	<b>Value Added Tax Act, 2013</b>	
1.	Amend the Act to clearly exempt VAT on cards payments and related fees or charges.	(1) Whereas the Act, has clearly exempted VAT on issuance of credit and debit cards, it is not clear as to whether this includes



MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

		card payments and any fees or charges relating to card transactions.
2.	Amend section 8 (1) to remove the ambiguity as to when a service qualifies as exported.	(2) Sec 8(1) on VAT on exported services lacks clarity. The law does not prescribe guidelines for determining the place of 'use or consumption of services'. The amendment should be aligned to section 2 on the definition of a service exported out of Kenya, the OECD and destination principle in order to make Kenya a competitive source of services. Specifically, guidelines should be drafted to determine the country with taxing rights over cross-border trade in services.
3.	Amend section 17 (5) (a) by inserting the words "or from withholding VAT credits from VAT withheld" immediately after the words "zero rated supplies".	(3) This section only entitles a VAT registered person to claim a VAT refund if he is making zero rated supplies. In view of the Withholding VAT credits, this section should be amended to permit VAT refund claims arising from WHVAT credits.
4.	Amend the Second Schedule to include text books and religious materials under specific HS codes back into the list of zero rated supplies.	(4) This provision was deleted from the Second Schedule. Noting the government's commitment to enhance access to education, the introduction of VAT on books inevitably increases the overall cost of learning in the country
5.	Amend Part A of the Second Schedule to the VAT Act by inserting a new paragraph 12 which provides as follows -  “(12) The supply of taxable goods or taxable services to be used exclusively for development and extraction activities of a mining company granted a mining license in accordance with the Mining Act, upon recommendation by the Cabinet Secretary responsible for Mining”.	(5) Currently, supplies to mining companies involved in prospecting are exempt. Once the companies reach the development stage, supplies to them will become taxable.
6.	Amend the Second Schedule to provide for zero rating of goods and services imported or purchased locally by oil and gas companies for all phases of the oil and gas cycle.	(6) This will significantly reduce the costs of exploration, speed up the pre-production cycle and enhance the government's take of profit oil.  Paragraph 30 of Part I of the First Schedule provides that taxable supplies, excluding motor vehicles, imported or purchased for

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

		direct and exclusive use in geothermal, oil or mining prospecting or exploration, by a company granted prospecting or exploration license in accordance with Geothermal Resources Act (Cap. 314A), production sharing contracts in accordance with the provisions of Petroleum (Exploration and Production) Act (Cap. 308) or mining license in accordance with the Mining Act (Cap. 306), upon recommendation by the Cabinet Secretary responsible for energy or the Cabinet Secretary responsible for mining, as the case may be are exempt from VAT.
7.	Paragraph 7 of Part II of the First Schedule to the VAT Act Clarification of the word hire under Part II – services of the first schedule	However, the provisions are under Part 1 (Goods) of the First Schedule to the VAT Act. Current legislation is ambiguous given the exemption is in respect of taxable supplies (i.e. Taxable goods and taxable services).  (7) Regulations be enacted to provide clarity on the definition of hire or charter since persons use the taxi cabs to transport them from one point to another.
8.	Amend Part C of the Second Schedule to provide for description of HS Codes 3003.10.00 and 3003.90.00.	(8) The Finance Act 2015 included HS Codes 3003.10.00 and 3003.90.00 under the newly introduced Part C of the Second Schedule. However, it did not provide the description thereof.
9.	Extension of the Transition Period for Imposition of VAT on Petroleum Products  In the Budget Statement FY 2016/17 the Cabinet Secretary, National Treasury extended by one year the transition period for the imposition of VAT on petroleum products which was to expire in September 2016. However, this was not incorporated in the Finance Bill 2016	(9) This provision be incorporated in the Finance Bill 2016 for it to be implemented.
10.(a)	<b>Inconsistencies between the TPA and VAT Act 2013</b>  The Second Schedule of the TPA should be amended to delete section 30 of the VAT Act.	(10) (a) Section 30 of the VAT Act – Refund of tax paid in error was retained. This could result in a possible conflict with section 47 of the TPA – Refund of overpaid tax.

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

(b)	Section 104(1) of the TPA should adopt to section 63 of the VAT Act.	(b) Section 63 of the VAT Act, 2013 on the general penalty was retained. The provisions therein are a replica of provisions under Section 104 (1) of the TPA on sanctions for offences but it is not very clear.
(c)	The TPA to be amended to include the provision where the Commissioner can be able to remit the interests.	(c) Section 21(3) of the VAT Act has been deleted. This section gave powers to the Commissioner to remit interest payable in whole or in part upon application. Section 89 (6) – Application and (7) of the TPA gives the power to the commissioner to waive penalties in whole or in part any penalty payable by a person except for one resulting from tax avoidance. The TPA does not provide for remission of the interest payable.
(d)	Clarification is required from the Commissioner on the date when the interest should start running.	(d)Section 32 of the VAT Act - interest on refund of taxes paid in error has been deleted. Section 48 of the TPA indicates that the interest for late payment of the amount erroneously refunded by the Commissioner runs from the date when the refund was erroneously paid. The Act further provides that the amount is due on the date set out in the letter. This is ambiguous.
(e)	More clarification on the publication of a private ruling to be provided to safeguard confidentiality.	(e)Section 58 of the VAT Act – Making private rulings has been deleted. Section 69 of the TPA provides for the publication of the Private Ruling but there is need to safeguard confidentiality.
11.	<b>EXCISE DUTY ACT 2015</b> The Act should be amended to adopt code based classification in order to avoid overlapping of excisable goods.	(11) Classification of excisable goods under the First Schedule of the Act partially moved from the tariff code-based classification to mere descriptions. This therefore means that the descriptions of the products no longer resemble those contained in the East African Community Common External Tariff (EAC-CET). Some descriptions of the excisable goods might overlap and this shift is likely to trigger endless disputes between taxpayers and KRA.
12.	The purpose of imposing excise duty on goods is to discourage consumption and water being a basic commodity should not be subjected to excise.	(12) The Act removed excise duty on harmless goods which were initially excisable under the Fifth Schedule of the repealed Customs and Excise Act Cap 472. It is however noted that water is still excisable under the Act.

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

13.	<p>(a) A clear definition of interest should be introduced in the Act to provide clarity on exemption of interest. The definition will also avoid any future disputes with KRA surrounding the issue;</p> <p>(b) In addition, return on loan should be defined in the Act. The Act should also exempt any administration, processing, or lending fees in whatever form from excise duty.</p>	<p>(13) Definition of interest</p> <ul style="list-style-type: none"> <li>Section 9(6) of the Act exempts excise duty on interest and insurance premium. However, the Act does not define what constitutes interest for excise duty purposes. This has resulted to conflicting tax opinions between the industry players and Kenya Revenue Authority (KRA).</li> </ul> <p>The industry players consider various fees or charges to be directly connected to advancement of loans to customers. Such fees include: loan processing fees, commitment fee among other similar charges.</p> <p>The absence of a clear definition of interest in the Act has resulted to reliance of the definition contained in the Income Tax Act (ITA) which reads as follows:</p> <p>"interest" (other than interest charged on tax) means interest payable in any manner in respect of a loan, deposit, debt, claim or other right or obligation, and includes a premium or discount by way of interest and commitment or service fee paid in respect of any loan or credit".</p>
14.	<p>Excise duty on cards and any other related charges or fees should be exempted from excise duty in order to support innovative financial and paperless mode of payments and improve access of financial services as well as promote globalization through usage of cards.</p>	<p>(14) Excise duty on cards' related payments discourages use of cards as a mode of payment. Penetration of card usage in Kenya is still in its infancy stage and it needs to be incentivized. Some of the fees involved are Interchange fees between banks which are charged by the card-issuing bank to the payment processor (or "acquirer") for each transaction. The interchange fees are bundled into total fees that merchants pay for transaction processing.</p>
	<p><b>Federation of Kenya Pharmaceutical Manufacturers (FKPM)</b></p> <p>The federation is content with the passage of the VAT Act, 2013 as it has resulted in savings by local manufacturers of pharmaceutical products which have been passed to the consumers.</p>	

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	Kenya Association of Manufacturers (KAM)	
1.	<p>Excise Duty Act, 2015</p> <p>THAT clause 19 of the Bill be deleted and substituted therefor with the following new clause –</p> <p>19. Section 10 of the Excise Duty Act 2015 be deleted.</p>	<p>(a) The magnitude of the excise increase in December 2015 has resulted in an unprecedented excise shock;</p> <p>(b) Since the excise driven price increases, volumes have significantly reduced and it is not clear how much further they will decline driven by inflation adjustments;</p> <p>(c) It is possible that Government revenue benefits from higher rates will be eroded by significant volume reduction;</p> <p>(d) In order to allow for the industry and Government to absorb and understand the impact of these changes on the market performance and Government revenue, we propose that the powers of the Commissioner General to adjust for inflation be deleted.</p>
2.	<p>Section 28 of the Excise Duty Act is amended –</p> <p>(a) in subsection (3) by inserting the words “excluding excise stamps” immediately after the word “inscription”; and</p> <p>(b) in subsection (4) by inserting the words “and unless the relevant excisable goods are exported” immediately after the word “goods” where it second appears.</p>	<p>(a) Excise stamps are a cost to the manufacture or exporter and therefore would add to the cost of export yet exports are not supposed to attract tax or levies in general;</p> <p>(b) It is not feasible to affix Kenyan excise stamps on goods destined for Tanzania for instance. The destination country would determine what kind of control to place on imports into their country;</p> <p>(c) Furthermore, proof of export requirements from a customs perspective would serve the purpose of tracking and tracing the goods.</p>
3.(a)	<p>Clause 21 of the Bill is amended –</p> <p>(a) In paragraph (c) by inserting the words “and mineral water of tariff no. 2201.10.00” immediately after the number “2201.90.00”;</p> <p>(b) By inserting the following new paragraphs after paragraph (c)-</p> <p>(ca) by inserting the expression “excluding fruit juices (including</p>	<p>(a) Water does not have harmful effects to the consumers and should not be charged excise duty;</p> <p>(b) Whereas more revenue will be collected by government, there are no special external costs incurred by these specific excisable goods with other non-excisable goods do not incur. Water is life, and thus needed by everyone;</p> <p>(c) Increases in excise tax is likely to increase business</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>grape must)and vegetable juices of tariff no. 20.09”, immediately after the word “juices” appearing in the item titled Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter;</p> <p>(cb) by inserting the words “the excise duty for carbonated non-alcoholic drinks under tariff no. 2202.10.00 and 2202.90.00 is reduced from kshs. 5 to Ksh. 3.50 per litre” appearing under the item on Waters and other non-alcoholic beverages not including fruit or vegetable juices.</p>	<p>informality against government objective to formalize the economy.</p> <p>(d) Impact of an increase in Excise duty on Non- alcoholic drinks are generally price elastic (with an increase in price, consumption reduces by more than the level of price rise) this therefore requires manufacturers to reduce their margins significantly so as to take up the additional cost in order to maintain sales and market share in the environment of reduced demand. In light of this, an increase in the excise duty result into reduced profits, government revenues.</p>
	<p>(c) By deleting paragraph (e)</p>	<p>(a) The plastic sector in Kenya is an essential industry and significant contributor to Kenya’s economy;</p> <p>(b) This sector has grown tremendously in the recent past and currently, there are 173 enterprises registered in Kenya as manufacturers of plastics and rubber products. Out of this, approximately 40 companies produce plastic products through a process known as film blowing. The 40 companies in the industry have a capital investment of over Kshs. 20.5 Billion. Currently, it is estimated that the sector contributed over Kshs. 5 Billion to the Kenyan Government revenue through taxes, fees and levies;</p> <p>(c) With the proposed amendment, the cost of producing the plastic products will significantly increase. This will essentially cause a ripple effect on the cost of goods and products consumed by the general public.</p>
(b)	<p>Inclusion of tariff codes for all the items under the first schedule.</p>	<p>Inclusion of tariff codes removes ambiguity. For example waters and non-alcoholic beverages are put together yet they have different tariff codes.</p>
4.	<p>Amend the First Schedule as follows:</p> <p>(a) The excise duty on Beer, Cider, Perry, Mead, opaque beer</p>	<p>(a) The Act increases the rates of excise tax on beer, spirituous alcohol and wine by 43%, 46% and 88% respectively. This will lead to an increase in consumer</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>and mixtures of fermented beverages and spirituous beverages of alcoholic strength not exceeding 10% Spirits of undenatured alcohol; spirit liqueurs and other spirituous beverages of alcoholic strength exceeding 10% is reduced from “Shs. 100 per litre” to “Kshs. 75 per litre;</p> <p>(b) reduce the excise duty on spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10% from “Shs. 175 per litre with “Shs. 145 per litre;</p>	<p>prices and force them to shift to cheaper, unregulated and untaxed alcohol which has serious health burden implications;</p> <p>(b) Experience from other parts of the world show that high duties imposed on alcohol have only served to encourage smuggling, counterfeiting or manufacture of illicit alcohol;</p> <p>(c) The alcohol industry in Kenya employs more than 5,000 people directly and over 1 million indirectly. Local beverage alcohol is manufactured using local ingredients such as neutral spirits, barley and sugar. Reduction in volumes will definitely reduce demand for these raw materials and interrupt the incomes of Kenyan farmers in the barley and sugarcane growing areas;</p> <p>(d) These amendments will increase the excise rates on alcoholic beverages by not more than 7%, which is the annual inflation rate of 2015/2016 according to figures provided by the Central Bank and the Economic Survey 2016</p>
<p>5.(a)</p>	<p>Amend the First Schedule as follows:</p> <p>(a) under item titled “electronic cigarette” replace the word “electronic cigarette” with the words “e-liquid”;</p> <p>(b) under item titled “electronic cigarette” replace the words “Excise duty of Sh. 3,000 per unit” with “Excise duty of sh. 3,000 per 1,000 millilitres”.</p>	<p>(a) Currently, Part I of the First Schedule of the Excise Duty Act 2015 provides for specific tax on the cartridge as opposed to the e-liquid;</p> <p>(b) When tax is to be applied to electronic cigarettes, it should be specifically levied on the quantity of e-liquid sold as opposed to the device used as the delivery system. Applying excise tax on cartridge is the equivalent of applying excise on the packaging of a cigarette as opposed to applying it on the cigarettes themselves;</p> <p>(c) In addition, the metric system used to charge specific tax on e-liquid is units. This does not take into account the actual e-liquid quantity in form of litres/milliliters, which is the best practice metric system to charge excise duty;</p> <p>(d) Taking cognisance that some of the e-liquid packaging</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

		<p>may not have the quantities explicitly indicated on the packaging, we propose an amendment to the legislation to require all manufacturers to indicate the quantities on the package for ease of administering specific excise rates proposed per 1000 millilitres;</p> <p>(e) aligning the terms used to define the various components of the electronic cigarette in the Excise Duty Act 2015, will enhance tax efficiency, equity and fair levying of the tax burden related to these products.</p>
(b)	<p>(a) The Excise Duty Act is amended by inserting the following new section after section 43 – 43A. There shall be a minimum retail pricing on cigarette products to be specified by the Commissioner in the First Schedule.</p> <p>(b) The First Schedule of the Excise Duty Act is amended in Part I by inserting the following new paragraph immediately after paragraph 2 - 3. The minimum retail pricing on cigarette products shall be at an excise duty rate of sh. 100 per pack of 20 king size cigarettes.</p>	<p>(a) Minimum Retail Pricing (MRP) is where retail prices on commodities are not permitted to be set below a certain level;</p> <p>(b) The single specific excise structure has various advantages in levelling the industry playing field and simplifying tax administration;</p> <p>(c) To further enhance and consolidate the gains brought about by the new excise regime, the proposal is to have minimum retail pricing on cigarettes. This will guard against the risk of heightened levels of illicit cigarette trade by making illegal cigarettes more easily detectable by enforcement agencies;</p> <p>(d) MRP has the capacity to control or lower the motivation for dumping cheap cigarettes into the market.</p>
(c)	<p>The First Schedule of the Excise Duty Act is amended in Part III deleting the definition of electronic cigarettes and substituting therefor with the following new definition- “electronic cigarettes” means battery powered electronic devices that deliver an aerosol (‘vapour’) without tobacco smoke generated from a liquid formulation (‘e-liquid’) whether or not containing nicotine and typically consisting of a battery, a heating element and a storage tank for the e-liquid”.</p>	<p>(a) The definition of Electronic Cigarette in Part I- Preliminary of the Excise Duty Act 2015 does not fully address the nature of the product;</p> <p>(b) Many different devices (disposables, rechargeable and modular refillables) are used to deliver the nicotine in the e-liquid to the consumer;</p> <p>(c) Depending on consumer preference, the delivery device may or may not be re-used;</p> <p>(d) In all cases the consumable element is the e-liquid;</p>



MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

		<p>(e) Considering electronic cigarettes are not tobacco products and do not contain tobacco or tobacco substitutes, the definition inadequately defines electronic cigarettes and creates ambiguity in the interpretation of the same.</p>
<p>6.</p>	<p>(a) Immediate stay of application of the 20% excise duty on locally assembled vehicles from completely knocked down kit as provided in clause 21 (d) of the Bill;                  (b) The Motor Vehicle Assemblers further recommend the reinstatement of the excisable vehicles as captured under the Fifth schedule of the repealed Customs and Excise Act indicating the 8 Digit HS Code of the vehicles and explicitly excluding Unassembled Vehicles from excise duty under the First Schedule of the Excise Duty Act.</p>	<p>(a) The industry will be forced to increase prices of locally assembled vehicles which will further reduce competitiveness of locally manufactured vehicles against imported fully built units especially second hand vehicles which form the bulk of Kenya's market share;                  (b) Imposition of this duty on locally assembled vehicles will disincentives the Motor Vehicle industry which may lead to the collapse of the Industry and this will definitely have a ripple effect on the Forward and Backward Linkages, whereby the local content suppliers and dealers may have to close shop;                  (c) The closure of the Industries will mean major loss of Employment/Jobs, affecting more than 10,000 people at the assembly plants, dealerships and local content suppliers;                  (d) The country will lose out on technology transfer;                  (e) The Government will also lose revenue due to the effects of imposing the excise duty on Locally Assembled Vehicles. This will include Income Tax, PAYE Tax, Value Added Tax, and Business Licensing Taxes to different County Governments;                  (f) The additional cost on the locally assembled vehicles will have a negative impact on critical sectors of the economy such as manufacturing, construction, agriculture, schools, transportation and mining which rely on buses and trucks that are assembled within the country;                  (g) The use of a percentage as opposed to a flat rate in calculating excise duty imposes a greater burden on locally</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>assembled vehicles as opposed to imported used vehicles which should be the main target for excise duty. The higher burden is as a result the high FOB prices for the CKD packs.</p>
<p>7. Repeal of the provisions and excise rate under Part I of the First Schedule under item Motor cycles of tariff 87.11 other than motor cycle ambulances and Shs. 10,000 per unit.</p>	<p>(a) The motor cycle sector is a fairly new and growing industry, and the additional duty burden of Kshs. 10,000 will have a negative impact on its growth;</p> <p>(b) Given the price of a motor cycle, kshs. 10,000 is a huge increase to the unit cost. This will either be absorbed by the producers significantly reducing their profits or by the consumers-who are low end earners e.g. bodaboda riders. This will definitely reduce the number of sales of locally produced motor cycles and in turn a collapse of the industry;</p> <p>(c) Motorcycle Assemblers contend that imposition of an excise duty of 10,000 per unit of the motorcycle makes it expensive for local customers and should be removed. Instead the NNTSA Motorcycle Operation Regulations 2015 should be implemented to improve motorists' road safety.</p>
<p>8. Clause 21 of the Bill is amended by deleting paragraph (a) and substituting therefor with the following new paragraph (a) for purposes of this Act, kerosene for industrial use is exempted and the Commissioner shall publish in the Kenya Gazette the list of industrial users registered, certified and exempted.</p>	<p>(a) Cost management: Kerosene is a raw material in paints and resins manufacturing the industry. Kerosene comprises 40% in Alkyd resins. Kerosene is also an input product in shoe polish manufacturing;</p> <p>(b) Resins constitute around 50% of the paint. With the recent introduction of Kes.7,250 per 1000 litres Excise Duty, it directly affects the industry by increasing its production costs by 6.7% – 8.4%;</p> <p>(c) Market Loss: The sector is already facing challenges by loss of export markets to countries like Zambia and Rwanda. This loss of sales in export markets results to reduced production capacity in the production plants. Utilization in the production plant is by over 1000 tons per</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

		month; (d) Uncompetitiveness: As it is the sector is facing stiff competition from cheaper importation of products from Egypt. Further increase in costs makes the Kenya producers further noncompetitive in the market. This has hindered growth and expansion of the sector by reduction of exports and unfair competition from the cheap imports; (e) Therefore, kerosene for industrial use should be exempted from excise duty and there should be introduced regulations to govern the consumers of kerosene, their registration and certification.
	<b>VAT ACT</b>	
1.	<p>Clause 27 of the Bill is amended in paragraph (a) by deleting sub-paragraph (i) and substituting therefor with the following new sub-paragraph –</p> <p>(i) by inserting the tariff numbers 2302.10.00, 2302.30.00, 2306.10.00, 2302.20.00, 2302.40.00 and 2306.30.00 at the end of paragraph 43;</p> <p>Amend the Second Schedule to the VAT Act to allow for zero rating of these finished goods to allow for claim for input tax:</p> <ul style="list-style-type: none"> <li>• Pest Control insecticides</li> <li>• Other Similar Products under</li> </ul> <p>380810 Insecticides 380820 Fungicides 380830 Herbicides, Anti-sprouting Products, Plant-growth Regulators 380840 Disinfectants 380890 Rodenticides,</p> <ul style="list-style-type: none"> <li>• Raw and packaging materials for agricultural pesticides</li> </ul> <p>Others are:</p> <ul style="list-style-type: none"> <li>• ROPP Caps</li> </ul>	<p>This is to include tariff numbers 2302.20.00 and 2302.40.00 which are also raw materials for animal feed manufacture. VAT exemption should not be restricted to only a few types of brans. We propose inclusion of 16% VAT on raw materials used for manufacture of animal feed i.e. 2302.20.00 (rice bran) and 2302.40.00 (bran from other cereals).</p> <p>(a) If we want quality crops and enhanced yield and better return to the farmer, use of pesticides is a must. They constitute over 30% of crop production costs;</p> <p>(b) VAT is levied on packing materials used in local formulations or re-packing, such as cartons, bottles, caps, labels etc. There is a disconnect because Imported finished packed products do not attract VAT;</p> <p>(c) This results in:</p> <ul style="list-style-type: none"> <li>(i) Locally formulated or repacked products being more expensive;</li> <li>(ii) Loss of jobs for formulators/re-packers and the packaging industry;</li> <li>(iii) Discourage new investments</li> </ul>
2.		

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<ul style="list-style-type: none"> <li>• Solar Water heaters</li> <li>• dewormers, Acaricides, Paraciticides – 3004.90.90</li> <li>• Wet blue tanned cow hides – 4104.11.00</li> <li>• Wet blue tanned goat skins – 4106.21.00</li> <li>• Wet blue tanned sheep skins – 4105.10.00</li> <li>• Cow Crust – 4104.49.00</li> <li>• Goat crust – 4106.22.00</li> <li>• Sheep crust – 4105.30.00</li> <li>• Wet blue splits – 4104.49.00</li> <li>• Finished Leather – 4107.19.00</li> <li>• Poultry products, meat and eggs</li> <li>• Bread</li> <li>• Products under HS heading 31.05 Mineral or chemical fertilisers containing two or three of the fertilising elements nitrogen, phosphorus and potassium; other fertilisers; goods tablets or similar forms or in packages of a gross weight not exceeding 10 kg.</li> <li>• Solar Water heaters</li> </ul>	
3.	<p>Amend the Second Schedule to the VAT Act to allow for zero-rating of filtering or purifying machinery and apparatus for liquids</p>	<p>(a) Water treatment and wastewater treatment industry is fast growing. Ensuring local production to be competitive will create jobs and enhance technology development, increase local content absorption, promote import substitution and expand export of these products to the region;</p> <p>(b) In addition, it will enhance efforts to promote environmental protection, pollution reduction and create decentralized waste management infrastructure;</p> <p>(c) Improving quality of untreated raw water will increase availability of portable water. Recycling of waste water will offer additional water availability and security.</p>
4.	<p>Amend the Second Schedule to the VAT Act to allow for zero-rating of officially donor funded projects.</p>	<p>By zero rating officially donor funded projects, the input VAT of suppliers to large officially funded infrastructure projects, would</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

		not be restricted. This eliminates the increase in cost to those suppliers that could in fact be passed on to the project contractor in full or in part.
5.	Amend the First Schedule of the VAT Act to exempt local manufacturers on sale of locally manufactured Footwear, Leather Goods and Leather Garments (accessories).”	The Government needs to level the playing field and encourage investment into the shoe making industry in Kenya.
	<b>Income Tax Act</b>	
1.	Expand the current investment allowance to cover for storage of raw materials and finished products used for manufacturing process.	<p>(a) The Current definition of “building” in Paragraph 24 of the Second Schedule for investment allowance purposes should be expanded to include storage for raw materials and finished products, ablation, training, staff welfare, car parks, open air storage (including storage tanks) and open air depots used for manufacturing process;</p> <p>(b) The definition of machinery” for the same purpose should be expanded to include the equipment for the following ancillary purposes – loading and offloading raw materials and finished goods direct to or from manufacturing plant. Consequently the definition of manufacture appearing in paragraph 24 should also be amended to exclude the word storage appearing as the last but fourth word;</p> <p>(c) The current investment allowance should be expanded to cover for storage of raw materials and finished products used for manufacturing process. This incentive will ensure that Kenyan industries continue to upgrade their plant and equipment. In addition it will also increase investment in manufacturing.</p>
2.	Inclusion of a provision that provides for the taxable benefit on the employee to be based on the depreciated value of the motor vehicle (depreciation rate to be used at 25% per annum on a reducing balance basis).	Taxation on motor vehicles: 2% of cost of motor vehicles while on corporate tax side, a maximum of Kshs.2 million only is allowed for capital allowances purposes.
3.	Amend Paragraph 3 (a) of Heading B to the third schedule to the	This will be less taxing for both the employee and the employer. (a) The non-resident withholding tax rate is 20%. This rate

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>Income Tax Act by deleting the words “twenty percent” and substituting therefor with “ten percent”.</p>	<p>presupposes that the profit of providers of imported services is 60%. This is not realistic. On the higher side, profit margins of service providers are around 20%;</p> <p>(b) This high withholding tax rate has encouraged non-compliance with the tax and created a situation where services rendered are paid for from foreign head offices thereby leading to complete loss to the Kenyan tax base;</p> <p>(c) The 20% withholding tax is sometimes rejected by foreign suppliers of services because they cannot claim the tax as paid. This is especially so where Kenya does not have a double tax agreement with the country of the supplier. In such cases, local companies have to gross up the fees to factor the tax. This is a huge burden which increases cost of operations.</p> <p>(d) The 10% non-resident withholding tax rate is reasonable and its implementation will encourage compliance;</p> <p>(e) If this proposal is implemented, KRA will generate more revenue from increased withholding tax payments;</p> <p>(f) In addition, the burden faced by local companies in regard to withholding tax on payments to non-resident persons will be reduced.</p>
<p>4.</p>	<p>Increase allowance of interest on housing loans from KSh. 150,000 to KShs.300,000.</p>	<p>(a) In view of the rising costs of housing as well as steep rise in interest rates, the allowance of sh. 150,000 is not sufficient. The increase will assist several wage earners (middle class and upper middle class) to invest in housing for own occupation;</p> <p>(b) The government is now working heavily on affordable housing and the incentive to employed persons will be increased in the tax benefits available in line with costs of borrowing and housing;</p> <p>(c) In addition it will be a good catalyst for the construction sector as demand will increase, thus making more jobs</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

5.	<p>Collection and distribution of SBP Fees - Counties collect and apportion Single Business Permit Fees to activities. There is need for the creation of a central collection of monies collected by County Governments from the issuance of Single Business Permits (SBP).</p>	<p>available as well.</p> <p>(a) There is need to centralize the sharing mechanism of SBP fees collected at the counties;</p> <p>(b) Absence of the centralization of this collection has led to each county demanding traders to obtain the SBP even when a trader is distributing goods;</p> <p>(c) No return service is offered by such counties and thus has translated to multiple taxation and licensing which has increased the cost of doing business;</p> <p>(d) Counties are also not able to properly charge on the components of the SBP, such as distribution, separately since the county that issued the SBP never gets to share the revenue with the county of distribution;</p> <p>(e) Centralizing this collection is in line with the 2006 Licensing Reforms that Kenya went through;</p> <p>(f) If the system is centralised, the monies shall be collected as income tax and shall be allocated to the County Governments based on their volume of collections from the SBP.</p>
1.	<p><b>PricewaterhouseCoopers Ltd (PWC)</b></p> <p><b>Limitation of benefits</b></p> <p>Delete sections 41(5)-(7) of the Income Tax Act and replace them with provisions based on 'beneficial ownership of income' provision as follows:</p> <p>'Except in the case of a Public Limited Company or a subsidiary of a Public Limited Company in the same country of residence as the Public Limited Company, where an agreement made under this section provides that income derived from Kenya is exempt or excluded from tax, or the application of the arrangement results in a reduction in the rate of Kenyan tax, the benefit of that exemption, exclusion or reduction shall not be available to a</p>	<p>(a) Limitation of Benefits ("LoB") provisions, which are aimed at curbing treaty shopping, have made it difficult for legitimate businesses to access Kenya's tax treaty network except in a very narrow range of circumstances;</p> <p>(b) Currently, the LoB provisions only allow treaty benefits when 50% or more of the underlying ownership of the party to the transaction is held by individuals who are resident in a treaty country or when the other party to the transaction is listed in a stock exchange in the treaty country;</p> <p>(c) The proposed amendment will effectively curb treaty shopping while allowing legitimate businesses access</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>person who, for purposes of the arrangement –</p> <p>(a) Receives the income in a capacity which is other than that of a beneficial owner, within the meaning accorded to that term by the relevant international agreement, and who does not have full and unrestricted ability to enjoy that income and to determine its future uses; and</p> <p>(b) Does not possess economic substance in the country of residence in the case of interest, royalties and management fees of whatsoever nature.’</p>	<p>Kenya’s tax treaty network as it will move away from a shareholding requirement to an ‘economic substance test through the requirement for beneficial ownership of income;</p> <p>(d) The amendment will also create certainty in the interpretation of tax treaties which will foster further investment in the country.</p>
<p>2.</p>	<p><b>Withholding VAT</b></p> <p>A. Amendment of section 42A of the <b>Tax Procedures Act, 2015</b> (TPA) as follows:</p> <p>That subsection (3) of section 42A of the TPA be amended as follows;</p> <p>(3) Provided that subsection (1) shall not apply where –</p> <p>(a) taxable supplies relate to official aided funded projects;</p> <p>(b) the Commissioner is satisfied the supplier has regularly complied with the obligations under this Act through issuance of a Tax Clearance Certificate;</p> <p>(c) the aggregate payment by the agent to the supplier in a month does not exceed the minimum level as determined by the Commissioner upon application by the supplier; or</p> <p>(d) the Commissioner is satisfied on application that the supplier’s nature of business makes it impractical to withhold and account for tax in accordance with this Section.</p> <p>B. Amendment of section 17 of the <b>VAT Act, 2013</b></p> <p>That the VAT Act, 2013 be amended by deleting the proviso to sub section (5) of section 17 and substituting thereof, a new proviso which will read as follows</p>	<p>The Finance Bill, 2016 through clause 38, has re-instated the withholding VAT system. However, the system continues to pose the following challenges:</p> <p>(a) The systems’ disregard of transaction volumes</p> <p>The majority of the appointed WH VAT agents, medium and large tax payers, deal with numerous transactions and as such make payments in respect to a multitude of invoices over any given period. The WH VAT system does not provide for a value threshold in relation to the tax being withheld. This means that tax payers are required to withhold VAT and issue WH VAT certificates in relation to all their VATable transactions regardless of the value of the transactions. This is administratively cumbersome and costly for WH VAT agents and their suppliers engaged in high volumes of transactions.</p> <p>b) Tax payers not being entitled to tax refunds arising from withheld VAT</p> <p>Unlike the repealed VAT Act, Cap 476 that expressly provided for refund of tax credit balances arising from WH VAT, the VAT Act, 2013 only provides for VAT refunds arising from making of zero rated supplies, bad debts and tax paid in error. This creates an unfavourable cash flow</p>



MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>Provided that any such excess shall be paid to the registered person by the Commissioner where-</p> <p>(a) the Commissioner is satisfied that such excess arises from making zero rated supplies; OR</p> <p>(b) tax is withheld by appointed tax withholding agents; and</p> <p>(c) the registered person lodges the claim for the refund of the excess tax within twelve months from the date the tax becomes due and payable.</p>	<p>position for suppliers whose WH VAT credits exceed output VAT as their VAT credits balances are not available for refund.</p> <p>c)The cost of modifying Enterprise Resource Planning (ERP) systems</p> <p>A significant number of the appointed tax payers who were mainly drawn from the Kenya Revenue Authority (KRA) large and medium tax payer offices operate Enterprise Resource Planning (ERP) systems that are inter alia set up to account for VAT (output and input). Upon the appointment as WH VAT agents, the affected taxpayers are obliged to incur unplanned expenses to modify their ERPs to facilitate compliance with the additional compliance obligations imposed on them by the KRA, which include accounting for VAT withheld by their customers and/or withholding and remitting VAT to the KRA where appointed as WH VAT agents.</p> <p>d)The lack of distinction between compliant and non-compliant tax payers</p> <p>The law does not provide for distinction or exemption of the compliant tax payers from the purview of WH VAT thereby imposing an additional compliance burden on already compliant tax payers without necessarily increasing the levels of compliance.</p> <p>e)Late remittance of withheld VAT</p> <p>In certain instances agents fail to remit the WH VAT to the KRA, on time and causing cash flow challenges for the affected suppliers who in the absence of WH VAT certificates are obliged to account and pay to the KRA the entire 16% output VAT without corresponding right to</p>
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MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

<p>3. <b>Education</b>  Amendment of the Second Schedule of the VAT Act 2013  Introduction of a new paragraph under Part C of the Second Schedule –to provide for zero rating of the following goods:  4820.20.00 Exercise books.  4901.91.00 Dictionaries and encyclopedias, and serial installments thereof.  4901.99.00 Other printed books, brochures, leaflets and similar printed matter.  4903.00.00 Children’s picture, drawing or colouring books.  4904.00.00 Music, printed or in manuscript, whether or not bound or illustrated.  4905.10.00 Globes, printed.  4905.91.00 Maps and hydrographic or similar charts of all kinds including atlases, wall maps and topographical plans, printed, in book form.  4905.99.00 Other maps and hydrographic or similar charts of all kinds including atlases, wall maps, and topographical plans, printed.  4911.99.10 Instructional charts and diagrams.  4911.99.20 Examination papers, excluding stationery.  8443.31.00 Machines which perform two or more of the functions of printing, copying or facsimile transmission, capable of connecting to an automatic data processing machine or</p>		<p>offset the withheld VAT against their output tax liability.   Additionally, even where WH VAT certificates are received from customers, the KRA in certain instances claim that payments of the withheld VAT cannot be tracked in its bank account and therefore denied the suppliers their right to credit for the VAT withheld.  (a) The passage of the VAT Act, 2013 removed books and related learning materials from the zero rate schedule and thus made them taxable for VAT purposes at the rate of 16%;  (b) This has resulted in an increase in the cost of books and other printed learning materials;  (c) The increased price of these materials has led to decreased affordability and as such a decrease in demand for books and other learning materials; further resulting in a hampering of government’s efforts to increase the quality of education;  (d) In addition, this has negatively affected the growth of Kenya’s publishing, book selling, and other related industries.</p>
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MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>a network. 8443.32.00 Other printers capable of connecting to an automatic data processing machine or to a network.</p>	
4.	<p><b>Oil and gas subcontractors</b> The Second Schedule to the VAT Act, 2013 be amended in PART A by inserting a new paragraph 13 immediately after paragraph 12 as follows:  13. The supply of taxable goods or taxable services, excluding motor vehicles principally designed for the transport of persons or goods other than special purpose motor vehicle under heading no 87.05 required for use in the field, imported or purchased for direct and exclusive use in oil or gas exploration and development, by subcontractors of a company granted oil or gas exploration license in accordance with a production sharing contract with the Government of Kenya, and in accordance with the provisions of Petroleum (Exploration and Production) Act (Cap.308) upon recommendation by the Cabinet Secretary responsible for energy.</p>	<p>(a) The repealed VAT Act, CAP 476, granted VAT remission (0% VAT) on taxable goods and taxable services supplied to O&amp;G companies. This is also currently applicable to most O&amp;G companies given the five (5) year transition period with respect to VAT remission on taxable goods and taxable services that was granted under the VAT Act, 2013;  (b) The remission scheme, albeit successful, did not address the impact on the O&amp;G subcontractors most of whom are in a significant VAT refund position (given that they provide services exclusively to O&amp;G companies). The cost of financing the amounts awaiting refund (which can take up to 3 years to be paid) has to be factored in the contract price which increases the cost of exploration and development;  (c) The remission scheme expires with effect from September 2018 and supplies by O&amp;G subcontractors for services will be subject to VAT at 16%. Although this will address the VAT refund challenges of the subcontractors, it will effectively increase the cost of investment of O&amp;G companies as services account for more than 80% of the sectors costs during the exploration and development phase. O&amp;G are also not making any supplies and therefore do not have the ability to pass the VAT cost to the final consumer.</p>
5.	<p><b>Tourism and hospitality</b> The Finance Bill, 2016 proposes to amend Section 13 (7) of the VAT Act, 2013;</p>	<p>This is a welcome amendment as it will: (a) Help increase the take home disposable income for the lower level of employees in the hospitality industry, hence</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>(a) by adding the words “any service charge paid in lieu of tips” at the end thereof;                  (b) by adding the following proviso at the end thereof-                  Provided that this subsection shall only apply in respect of service charge where-</p> <p>(a) the service charge is distributed directly to employees of the hotel and restaurant in accordance with a written agreement between the employer and the employee; and                  (b) the service charge does not exceed ten percent of the price of the service, excluding such service charge.</p>	<p>boosting their morale;                  (b) Help Kenya to retain its image as the favourable tourism destination due to competitive hotels prices;                  (c) Make Kenya more competitive vis-à-vis its counterparts in the region/continent since a review of international best practice on the tax treatment of service charges reveals that most countries do not subject such charges to VAT.</p>
<p>6.</p>	<p><b>Zero-rating of local supplies to duty free shops</b>                  PART A of the Second Schedule to the VAT Act, 2013 be amended by inserting the following new paragraph 12 immediately after the proposed paragraph 11:                  12. “The supply of goods and taxable services to duty free shops”</p>	<p>(a) In an effort to provide clarity with regards to the operation of duty free shops, the Finance Act 2015 (“FA”) amended the Value Added Tax, 2013 (“VAT Act”) to provide for a definition of ‘duty free shops’ and also made it clear that goods purchased from duty free shops by passengers departing from Kenya to places outside Kenya are subject to VAT at the zero rate;                  (b) Unfortunately, the VAT Act does not provide guidance on the VAT status of supplies made to/acquired by duty free shops as inventory and/or for use in duty free shops;                  (c) The lack of clear provision in relation to supplies to duty free shops has been construed to mean that local supplies to duty free shops are subject to VAT at the standard rate (16%);                  (d) Such treatment of supplies to duty free shops will result in duty free shop operators being in a perpetual VAT refund position since they do not have output tax against which to offset the input tax incurred. The said VAT refund claims will impair cash flows for both the operators who have to wait for long periods before their claims can be processed and the Government since it will have to budget for these VAT refunds;</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

		<p>(e) Duty free shop operations, which are targeted at outgoing travellers from Kenya, are closely aligned to those of EPZs, with the primarily distinction being that EPZs manufacture/process for the export market while duty free shops warehouse goods for export market. The VAT Act 2013 provide for the zero-rating of supplies made to EPZ entities;</p> <p>(f) Similarly to supplies to EPZs, the VAT Act should be unequivocal on the VAT status of supplies made to duty free shops, which similar to EPZs, are also customs bonded facilities.</p>
	<b>NAIROBI STOCK EXCHANGE</b>	
1.	<p><b>Stamp Duty Act</b></p> <p>(a) Section 64 of the Stamp Duty Act is amended by inserting the following new paragraph immediately after paragraph (d) -</p> <p>“(d) shares of co-operative societies duly registered in Kenya”; and</p> <p>(b) Section 117 of the Stamp Duty Act is amended by inserting the following new subsection after subsection (1) -</p> <p>“(1A) a transfer of shares of a co-operative duly registered in Kenya provided that such a transfer occurs on an automated and transparent electronic platform.”</p>	<p><b>Promotion of a national savings and investment culture and to develop the co-operative movement</b></p> <p>This amendments seeks to address a number of problems that exist under the current regime of co-operative share trading:</p> <p>(a) A co-operative share holder cannot sell his or her shares for more than the nominal price at which they were obtained;</p> <p>(b) The transfer of shares attracts stamp duty at 1%-this, when combined with the point above, means that the seller of co-operative shares effectively suffers a net loss on his investment; and</p> <p>(c) The current over-the-counter market is opaque and inefficient</p>
2. (a)	<p><b>Income Tax Act</b></p> <p>Clause 13 of the Bill is amended by deleting paragraph (c) and substituting therefor with the following new paragraph -</p> <p>“(c) in paragraph (2) -</p> <p>(i) by inserting the following new sub-subparagraph after subparagraph (g)(ii) -</p> <p>“(iii) in the case of a company conducting business in either the</p>	<p>To simultaneously revamp sectors critical to the economy which are:</p> <p>(a) Tourism;</p> <p>(b) Agriculture;</p> <p>(c) Wholesale and retail trade;</p> <p>(d) Manufacturing;</p> <p>(e) B P O (Business Process Outsourcing); and</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>tourism, agriculture, wholesale and retail trade, manufacturing, business process outsourcing, financial services, energy, mining or technology sectors that seeks to list its shares via introduction on the Growth Enterprise Market Segment, twenty percent for the period of five years commencing immediately after the year of income following the date of such listing”; and</p> <p>(ii) by inserting a new subparagraph immediately after subparagraph (h) as follows –</p> <p>“(i) in the case of a company that constructed at least one thousand residential units annually, twenty per cent for that year of income, subject to approval by the Cabinet Secretary responsible for housing”.</p>	(f) Financial services
(b)	<p>(a) Clause 2 of the Bill is amended by inserting the following new definition after the proposed definition of “deemed interest” –</p> <p>“Social impact bond” and “Green bond” means a fixed income product issued either by the national government, county government or a company to enable capital-raising and investment for new and existing projects with environmental and social benefits;”</p> <p>(b) Clause 13 of the Bill is amended by inserting the following new paragraph after the proposed paragraph 54 –</p> <p>“55. Interest on a social impact or green bond.”</p>	<p>To support the Kenya Green Economy Strategy and enable Government to efficiently deploy budgetary resources through the:</p> <p>(i) A Social Impact Bond, also known as a Pay for Success Bond or a Social Benefit Bond which is a contract with the public sector in which a commitment is made to pay for improved social outcomes that result in public sector savings; and</p> <p>(ii) Green Bonds enable capital-raising and investment for new and existing projects with environmental benefits.</p>
3.	<p><b>Retirement Benefits Act</b></p> <p>Amend the Investment Guidelines to provide the maximum investment for each asset category as follows:</p> <p>1. Cash and Demand Deposits in institutions licensed under the Banking Act Of the Republic of Kenya. 5%</p> <p>2. Fixed Deposits, Time Deposits and Certificated of Deposit in institutions licensed under the Banking Act of Kenya. 30%</p>	<p>(a) Avail affordable housing to all Kenyans; and</p> <p>(b) Availing long-term funds to solve working capital challenges in Small and Medium-sized Enterprises (SMEs)</p>

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

	<p>3. Commercial paper, Corporate agency registered by the rate Bonds, Mortgage Bonds and loan stocks approved by the Capital Markets Authority non listed and other instruments issued by private companies, provided the bond or instrument has been given investment grade rating by a credit rating agency registered by CMA, a collective investment schemes incorporated in Kenya and approved by the CMA reflecting this Category. 30%</p> <p>4. Preference shares and ordinary shares of Companies quoted in the Kenya and approved by the CMA reflecting this category, to read as: Preference shares, ordinary shares and other listed securities quoted on an approved securities exchange and approved by the CMA 70%</p> <p>5. Kenya, Uganda or Tanzania Governments Securities and infrastructure bonds issued by public institutions and collective investment schemes incorporated in Kenya, Uganda and Tanzania. 90%</p> <p>6. Unquoted shares of companies' incorporated in Kenya and collective investment schemes incorporated in Kenya and approved by the CMA reflecting this category. 5%</p> <p>7. Offshore investments in banks deposits, government securities, quoted equities and rated Corporate Bonds 15%</p> <p>8. Immovable property in Kenya and units in property Unit Trust Schemes incorporated in Kenya and collective investments schemes incorporated in Kenya and approved by the CMA reflecting this category. 30%</p> <p>9. Guaranteed Funds. 100%</p> <p>10. Private Equity and Venture Capital 10%</p> <p>11. Any other assets (commodities, trade receivables etc.) 10%</p>	
4.	<p><b>Banking Act</b> (a)Section 2 of the Banking Act is amended by inserting the following new definition in its proper alphabetical sequence –</p>	Trade repositories are entities that maintain a centralized electronic record (database) of OTC derivatives transaction data.

MATRIX ON THE MEMORANDA RECEIVED ON THE FINANCE BILL, 2016

<p>“trade repository” means an entity duly incorporated in Kenya under the Companies Act that does not engage in banking either in a core, supplementary or supportive capacity and operates a robust and secure technology platform for receipt, storage, analysis and dissemination of derivatives and other types of data and has acquired a Letter of Comfort from the Central Bank of Kenya before commencing operations</p> <p>(b) Clause 45 of the Bill is amended in paragraph (c) by inserting the following subparagraph after subparagraph (ii) –</p> <p>“(ii) by inserting the words “trade repository” immediately before the words “or authority” in paragraph (f);”</p>	<p>By centralizing the collection, storage and dissemination of data, TRs can play an important role in providing information that supports risk reduction, operational efficiency and cost savings for both individual entities and the market as a whole.</p>
<p>5. <b>Public Private Partnerships Act</b></p> <p>Section 2 of the Public Private Partnerships Act is amended in section 2 by inserting the following new definition in its proper alphabetical sequence –</p> <p>“contracting authority”, means a State department, agency or state Corporation, but excluding County Government, which intends to have a function undertaken by it performed by a private party;</p>	<p>To support the funding of devolved Government and reduce reliance on Central Government.</p>



MINUTES OF THE 68<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
FINANCE, PLANNING & TRADE HELD ON TUESDAY 2<sup>ND</sup> AUGUST, 2016 IN  
COMMITTEE ROOM, 4<sup>TH</sup> FLOOR, PROTECTION HOUSE, PARLIAMENT  
BUILDINGS AT 10.00AM

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**PRESENT**

1. Hon. Mary Emase
2. Hon. Nelson Gaichuhie, MP
3. Hon. Jimmy Nuru Angwenyi, MP
4. Hon. Tiras Ngahu, MP
5. Hon. Jones Mlolwa, MP
6. Hon. Daniel Epuyo Nanok, MP
7. Hon. Abdul Rahim Dawood, MP
8. Hon. Sumra Irshadali, MP
9. Hon. Anyanga Andrew Toboso, MP
10. Hon. Lati Lelelit, MP
11. Hon. Iringo Cyprian Kubai, MP
12. Hon. Shakeel Shabbir, MP
13. Hon. Dr. Oburu Oginga, MP
14. Hon. Sammy Mwaita, MP
15. Hon. Joseph Limo, MP
16. Hon. Patrick Makau King'ola, MP
17. Hon. Kirwa Stephen Bitok, MP
18. Hon. Ronald Tonui, MP
19. Hon. Sakwa John Bunyasi, MP

**Ag. Chair**  
**Vice-Chairperson**

**APOLOGIES**

1. Hon. Benjamin Langat, MP
2. Hon. Eng. Shadrack Manga, MP
3. Hon. Ogendo Rose Nyamunga, MP
4. Hon. Joash Olum, MP
5. Hon. Abdullswamad Shariff, MP
6. Hon. Alfred Sambu, MP
7. Hon. Sammy Koech, MP
8. Hon. Dennis Waweru, MP
9. Hon. Sakaja Johnson, MP
10. Hon. Abdikadir Ore Mohammed, MP

**Chairperson**

## **KENYA NATIONAL ASSEMBLY**

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

### **MIN.NO. DCF/263 /2016: PRELIMINARIES**

Pursuant to Standing Order No. 188 the Committee nominated Hon. Mary Emase, MP to chair the meeting. The Ag. Chairperson then called the meeting to order at 10. 30am and prayed.

### **MIN.NO. DCF/264/2016: BRIEF BY PARLIAMENTARY BUDGET OFFICE ON FINANCE BILL, 2016**

The Parliamentary Budget Office briefed the Committee as follows:-

#### **INTRODUCTION**

The Finance Bill, 2016 was submitted to National Assembly on 13<sup>th</sup> June, 2016 and was put through the First Reading on 16<sup>th</sup> June, 2016. Thereafter, it stood committed to the Departmental Committee on Finance, Planning and Trade for consideration. The Bill has a timeline of 3 months from the time of enactment of the Appropriation law, upon which it is required to be considered and approved by the National Assembly. This is in accordance with Section 40 of the Public Finance Management Act, 2012. Meanwhile, the proposed taxes in various tax laws will be levied in accordance with the Provisional Taxes and Levies Act.

Most of the proposed amendments to the Income Tax, Excise Duty, VAT, Tax Procedures Acts are deemed to have come into operation by 1<sup>st</sup> July 2016; with a few such as the ones relating to Residential Rental Income Tax waiver and VAT withholding being backdated to 19<sup>th</sup> January, 2016. The rest on miscellaneous amendments except on the Alcoholic Drinks Control and Special Economic Zones Acts (9<sup>th</sup> June, 2016) will become effective on 1<sup>st</sup> January, 2017.

#### **OVERVIEW OF THE FINANCE BILL, 2016**

The Finance Bill, 2016 contains a total of 59 clauses which propose amendments to the three (3) main tax laws namely, Income Tax Act, Excise Duty Act and Value Added Tax Act; Tax Procedures law as well as other miscellaneous amendments in a total of nine (9) financial sector statutes, which are, Retirement Benefits Act, Kenya Revenue Authority Act, Capital Markets Act, Banking Act, Alcoholic Drinks Control Act, Kenya Deposit Insurance Act, Public Finance Management Act, Tax Appeals Tribunal Act and Special Economic Zones Act.

**Clauses 2 – 16**, proposes amendments to the **Income Tax Act** and some of the key highlights in this part include:

- a) The introduction of a taxable minimum threshold of the Residential Rental Income Tax (RRIT) at Kshs. 144,000 per annum (Kshs. 12,000 per month) and also reducing the applicable rate from 12% to 10%. This is after the Finance Act, 2015 introduced this type of tax for residential rental income not exceeding Kshs. 10 million annually – *clause 3*.
- b) Empowerment of the Commissioner to appoint withholding agents for Residential Rental Income Tax – *clause 6*.
- c) Repealing of various Sections of the Principal Act in a bid to re-align it to the provisions of the Tax Procedures Act – *clauses 7 - 11*
- d) The Section that provides for income tax refund is repealed so as the provision in Tax Procedures Act to be used. However, whereas the Section proposed to be repealed provided for a period of 7 years within which tax refund can be claimed, and interest accrual thereof, it is noted that the provision in the Tax Procedures contains a period of 5 year with no mention of interest.
- e) Tax exemption for bonuses, overtime and retirement benefits for employees whose taxable employment before such is below the lowest tax band. Also, proposed for exemption is the interest income on bonds issued by the East African Development Bank (EABD) – *clause 13*
- f) Personal relief is proposed to be enhanced by 10% from the current Kshs. 13,944 per annum to Kshs. 15,360 per annum. This translates to Kshs. 118 per month. In addition, the Pay-As-You-Earn (PAYE) banding has been shifted upwards from the lowest band of Kshs. 121,968 to the proposed Kshs. 134,164 per annum at 10% (Kshs. 10,164 to Kshs. 11,180.3 per month). The highest band to move from Kshs. 466,704 to Kshs. 513,373 per annum at 30% (Kshs. 38,892 to Kshs. 42,781) – *clause 14(a and b)*
- g) Corporate Income proposed to be reduced from 30% to 20% to incentivise companies that construct at least 1,000 residential units annually.

**Clauses 17 – 22**, proposes amendments to the **Excise Duty Act** and some of the main thrust in this part include:

- a) Imposition of a duty of Kshs. 7.20 per litre of kerosene – *clause 21(a)*
- b) Introduction of duty on cosmetics and beauty products at the ad valorem rate of 10% - *clause 21(b)*
- c) Water is excluded from excise duty – *clause 21(c)*
- d) The specific excise duty on vehicles of Kshs. 200,000 (older than three years) and Kshs. 150,000 (bellow three years old) is proposed to be replaced with ad valorem rate of 20% - *clause 21(d)*

- e) Exempted goods include excisable goods purchased locally for direct and exclusive use in the implementation of official Aid Funded Project (to the extent provided in the financing contract)

**Clauses 23 – 28**, proposes amendments to the **Value Added Tax Act** and some of the key issues in this part include:

- a) In the Exemption regime, taxable goods, services and items introduced in clauses 24 – 27 are such as
- Service charge in lieu of tips (not exceeding 10% of the service).
  - Raw material for animal feed.
  - Vehicles for official Aid Funded Projects.
  - Equipment and machinery imported or purchased locally for use by KDF, NPS and military supplies.
  - Liquefied petroleum gas
  - Wheat seeds
  - Garments and leather footwear manufactured at the Export Processing Zone
  - Some equipment for the Museums
  - Goods for direct and exclusive construction of specialized hospital with accommodation facilities.
  - Park entry fees
  - Service with respect to tour operators and construction of specialized hospital with accommodation
- b) In the Zero rated regime, taxable goods and items in clause 28 include
- Supply of taxable goods and services to a special economic zone (SEZ) enterprise.
  - Medicaments containing anti-biotic.

**Clauses 29 – 39**, proposes amendments to the **Tax Procedures Act** and some of the salient issues in this part include:

- a) Appointment of tax representatives for non-residents (either by the non-resident persons themselves or the Commissioner) – *clause 30*
- b) Empowerment of Kenya Revenue Authority (KRA) to seek auxiliary information with the aim of pre-populating the I Tax system – *clause 34*
- c) Introduction of tax amnesty for owners of assets and businesses outside Kenya who may wish to re-invest back into the country – *clause 36*
- d) Provision for appointment and revocation of the Value Added Tax (VAT) withholding agents – *clause 38*

- e) Tax refund period is proposed to be increased from 1 year to 5 years except for VAT – *clause 39*

**Clauses 40 – 59**, proposes amendments to some **financial sector statutes**. Some of the main issues in this part include:

- a) Amendment to **Retirement Benefits Act** so as to allow non-renewable perpetual licence to institutions licensed by the Authority – *clause 40*
- b) Amendment to the **Capital Markets Act** to provide for online forex trading – *clause 42*
- c) Amendment to the **Banking Act** – *clauses 45 to 48*
- Incorporation of SACCOs and utility companies in the Credit Information Sharing framework to facilitate cross border sharing of credit information
  - The Central Bank of Kenya to consult the Cabinet Secretary on matters receivership
  - Penalty for contravening prudential guidelines and financial laws to be enhanced from Kshs. 5 million to Kshs. 20 million
  - Minimum Core Capital Requirement for banks and mortgage institutions proposed to be increased to Kshs. 2 billion by December, 2017; Kshs 3.5 billion by December, 2018 and Kshs. 5 billion by December, 2019.
- d) Amendment to **Kenya Deposit Insurance Act** to provide for the Central Bank of Kenya to consult the Cabinet Secretary on appointment of the Kenya Deposit Insurance Corporation as a receiver – *clause 51*
- e) Amendment to the **Special Economic Zone Act** to remove blanket tax exemption and replace it with specific tax incentives as shall be specified in the respective tax laws – *clause 59*.

### **Members Concerns/ Clarifications**

The Committee raised concern on the proposal on the Clause 21 which proposes to amend the First Schedule on Excisable goods where there in an introduction of an excise duty of Kshs. 7.20 per litre on the Kerosene. The Committee felt that this was proposals was not necessary.

The specific excise duty on vehicles of Kshs. 200,000 (older than three years) and Kshs. 150,000 (bellow three years old) is proposed to be replaced with ad valorem rate of 20% - *clause 21(d)*. Kenya Revenue Authority should provide detailed analysis on the impact from specific tax systems

MIN.NO. DCF/265 /2016: ADJOURNMENT

The Ag. Chairperson adjourned the meeting at 1. 45pm

Signed.....

Vice Chairperson

Date..... 16<sup>th</sup> Aug 2016

**MINUTES OF THE 69<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON THURSDAY 4<sup>TH</sup> AUGUST, 2016 IN THE MEDIA CENTRE, PARLIAMENT BUILDINGS AT 10.00AM**

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**PRESENT**

1. Hon. Benjamin Langat, MP
2. Hon. Nelson Gaichuhie, MP
3. Hon. Jimmy Nuru Angwenyi, MP
4. Hon. Ronald Tonui, MP
5. Hon. Jones Mlolwa, MP
6. Hon. Mary Emase, MP
7. Hon. Daniel Epuyo Nanok, MP
8. Hon. Abdul Rahim Dawood, MP
9. Hon. Sumra Irshadali, MP
10. Hon. Anyanga Andrew Toboso, MP
11. Hon. Lati Lelelit, MP
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13. Hon. Joash Olum, MP
14. Hon. Shakeel Shabbir, MP
15. Hon. Dr. Oburu Oginga, MP
16. Hon. Sammy Mwaita, MP
17. Hon. Joseph Limo, MP
18. Hon. Patrick Makau King'ola, MP
19. Hon. Ogendo Rose Nyamunga, MP

**Chairperson**

**Vice-Chairperson**

**APOLOGIES**

1. Hon. Eng. Shadrack Manga, MP
2. Hon. Kirwa Stephen Bitok, MP
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4. Hon. Abdullswamad Shariff, MP
5. Hon. Sakwa John Bunyasi, MP
6. Hon. Alfred Sambu, MP
7. Hon. Tiras Ngahu, MP
8. Hon. Sammy Koech, MP
9. Hon. Dennis Waweru, MP
10. Hon. Sakaja Johnson, MP

## **FRIEND OF THE COMMITTEE**

1. Hon. Timothy Bosire, MP

## **KENYA NATIONAL ASSEMBLY**

- |                         |   |                       |
|-------------------------|---|-----------------------|
| 1. Mr. Joseph Nyaga     | - | Chief Fiscal Analyst  |
| 2. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 3. Mr. Fredrick Otieno  | - | Third Clerk Assistant |
| 4. Mr. Josephat Motonu  | - | Fiscal Analyst        |
| 5. Mr. Thomas Ogwel     | - | Fiscal Analyst        |
| 6. Mr. Erick Ososi      | - | Research Officer      |

## **MIN.NO. DCF/266 /2016: PRELIMINARIES**

The Chairperson called the meeting to order at 10. 30 am and prayed.

## **MIN.NO. DCF/267/2016: CONSIDERATION OF THE FINANCE BILL, 2016**

The Parliamentary Budget Office briefed the Committee on the proposed amendments to the tax laws as follows:-

### **1. AMENDMENTS TO THE INCOME TAX ACT**

**Clause 2 proposes to amend Section 2 of the Act on definition:** The definition of “deemed interest” is moved from Section 16 which provide for deductions not allowed. This will imply that the definition of deemed interest is applicable not only in Section 16 but also throughout the Act.

**Clause 3 intends to amend Section 6A of the Act which provides for Residential Rental Income Tax:** It proposes to set the lower limit on residential rental income subject to income tax and also proposes reduction of the applicable tax rate from 12% to 10%.

Here, the minimum limit of Kshs. 144, 000 per annum (Ksh.12, 000 per month) is proposed thereby exempting lower incomes earners from being liable to income tax. Besides, Clause 14(1) proposes to reduce the income tax rate from the current 12% to 10%. This will be an incentive the owners of the residential rental houses to beef up compliance.

**Clause 4 seeks to amend Section 12 that provide for instalment tax:** this Section provides for deduction of Advance Tax, Professional Fees, and Allowances Income as well as Presumptive Income Tax. However, it is noted that presumptive income tax Section was repealed in 2000 and therefore no longer in use. Hence, this proposed amendment is only updating the law to that effect.

**Clause 5 amends Section 16 of the Act on deemed interest:** the definition of “deemed interest” is removed from Section 16 which provides for deductions not allowed and placed in Section two with other definitions implying that it will now applies across the entire Income Tax Act.



**Clause 6 proposes amendment to Section 35 which provide for deduction of tax from some income:** This proposal is meant to actualize the appointment of withholding tax agents for rent, premiums for use or occupation of immovable property.

With-holding tax by appointed agents is used to facilitate effective and efficient tax collections and to reduce tax evasions. Here, part of the taxes is withheld by the user of the immovable property and remitted to revenue agency at the point of making payment to the owner of such property. The ultimate aim is to enhance compliance.

**Clauses 7 to 12 and 16 propose to repeal various Sections of the Principal Act, mainly to alignment it with Tax Procedures Act 2015:**. This is to avoid duplication in legislation that can occasion conflict and confusion in interpretation. Sections proposed to be repealed are:

- i. Clause 7 proposes deletion of Subsections 6 and 7 of Section 37 that deals with appeal procedure for an aggrieved person by imposition of a penalty. The appeals are elaborately covered under Sections 52-57 of the Tax Procedures Act.
- ii. Clause 8 repeals Section 51A that deals with filing of tax returns and keeping of records. The advent of digitization of Tax Systems through ETR and i-Tax has rendered this section redundant given that it deals with hardcopy filing of returns hence the proposed deletion.
- iii. Clause 9 proposes repealing of Section 72 on imposition of additional tax in case of default in payment. Penalties are elaborately provided for under Part XII on Administrative and Offences of the Tax procedures Act 2015.
- iv. Clause 10 proposes to repeal section 75A that deals with instalment assessment. This is elaborately provided for under sections 28-31 of Tax procedures Act 2015.
- v. Clause 11 proposes to repeal section 98 on collection of tax from people leaving or have left Kenya. Tax Collections are elaborately covered under Part VII of the Tax Procedures Act 2015.
- vi. Clause 12 proposes to delete Section 105 on refund of overpaid tax after the expiry of 7 years. This is legislated under Section 47 of the Tax Procedures Act 2015.
- vii. Clause 16 proposes to repeal the 13<sup>th</sup> schedule that deals with transaction requiring PIN. This is provided for in Tax Procedures Act 2015.

**Clause 13 amends the First Schedule on Exemptions:** The proposal seeks to exempt income from employment paid in form of bonus, overtime allowances for those whose taxable employment income does not exceed the lowest tax band.

This will give the low income earners more disposable income when they earn these allowances hence they will be able to have enhanced purchasing power with the attendant multiplier effect in the economy.

**In addition, there is a proposed exemption of Interest Income on Bonds issued by the East African Development Bank:** This will promote investment in these bonds hence availing more credit facilities to be offered by the bank. This is because The East African Development Bank (EADB) which was operationalized in July, 2015 is profiled in same category with IMF, World Bank and the African Development Bank.

**Clause 14 amends the Third Schedule on tax rates and reliefs:** Increase of annual resident personal relief from current Ksh.13, 944 to Kshs.15, 360. This is provided under clause 14(a) is 10% increase of the personal relief will lead to a net relief of Ksh.118 per month for employees. This will slightly increase the disposable income of taxable persons and will lead to a small reduction in the public revenue from the income tax.

**Additionally, there is a proposal to shift upwards of the employment income bands:** Clause 14(b) proposes to increase the income lower band from 133,620 to Kshs.134, 164 per year and also to increase the uppermost band from Ksh.466, 716 to Ksh.513, 373 per annum.

The increase of the lower band implies that some taxable income will be exempted since they will fall below the lowest taxable income. Similarly, the raising of the uppermost band implies that some income that was subject to a 30% taxable rate will be charged at 25% if this is enacted.

This has the effect of modestly increasing the disposable income of those falling under the categories of these income bands. However, there will be a loss of tax revenue proportionate to the change.

**Further, there is a proposed reduction of corporate tax rate from 30% to 20% to companies that construct at least 1,000 residential cost units per year.** This is proposed in clause 14(c) and is geared towards incentivizing massive investment in residential houses so as to arrest the glaring housing inadequacy in the country.

**Clause 15 amends paragraph 6 of the Eighth Schedule which provides for taxation of gains from property:** there is a proposal to exempt from tax a transfer of assets involving a company where spouses and their immediate family hold 100% shareholding.

This new proposal will add to the already existing tax exemption on transfer of assets between spouses, former spouses and their immediate family.

Clause 16 proposes to amend the Thirteenth Schedule which provides for transactions requiring Personal Identification Number (PIN): the Schedule is proposed to be repealed. This is perhaps because the matter is provided for elaborately in the Tax Procedures Act.

## 2. AMENDMENTS TO THE EXCISE DUTY ACT

Clause 17 and 18 amends Section 2 of the Principal Act on definitions and time of supply on importation respectively: the proposal incorporate the Special Economic Zones (SEZs) in the definition of the terms Export and Import. This is to incorporate the SEZs to the tax privileges that are enjoyed by the Export Processing Zones in tandem with the provisions of SEZs Act.

Clauses 19 and 20 seek to correct the wrong references that are made in Sections 10 and 15(1) (b) of the Principal Act.

Clause 21 proposes to amend the First Schedule on Excisable Goods: There is an introduction of an excise duty of Kshs. 7.205 per litre on the Kerosene.

This will lead to an increase in the price of kerosene to the consumers and given that a significant populace still relies on kerosene as fuel, this will add to their tax burden and may not achieve the intention of checking on the adulteration of petroleum products as was contained in the 2016/2017 budget statement of the Cabinet Secretary.

Also, there is an introduction of an excise duty on cosmetics and beauty products: Clause 21(b) proposes to impose a 10% excise duty on these items: This will harmonize the excise duty treatment of the products regionally with the EAC excise regime.

Further, there is an exemption of waters of tariff 2201.90.00 from excise duty tax: This will make bottled water less costly therefore more accessible to consumers.

Finally, there is a proposal to switch from specific tax system to ad valorem tax system on motor vehicles: Clause 21(d) repeals the specific taxes of KSh. 150,000 and KSh. 200,000 for vehicles less than 3 years and over three years respectively from date of first registration and substituting with an ad valorem rate of 20%. This is for equity taxation principle and also to enhance collection of tax revenue in this area.

Clause 22 proposes an exemption is proposed on the excisable goods imported or purchased locally for direct and exclusive use in the implementation of Official Aid- Funded Project: This is proposal seeks to reduce costs on Aid-funded projects subsequently enhancing the coverage in terms of beneficiaries of these projects. This used to be the practice before the enactment of

Excise duty Act 2015 and is in line with other tax legislations like income tax that exempts incomes of Aid-agencies and charity organizations from taxation.

### 3. AMENDMENTS TO THE VALUE ADDED TAX ACT

**Clause 23 of the Principal Act on definitions:** the proposal incorporates the Special Economic Zones (SEZs) in the definition of the terms Export and Import. This is to incorporate the SEZs to the tax privileges that are enjoyed by the Export Processing Zones in tandem with the provisions of SEZs Act.

**Clause 24 amends Section 13 of the Act on taxable value of supply:** The bill proposes to amend section 13(7) of the Act by exempting from taxation “any service paid in lieu of tips” provided that it does not exceed ten percent of the price of the service, excluding such service charge and that it is distributed directly to the employees of the hotel or restaurant in accordance with a written agreement between the employer and the employee.

The measure is likely to occasion revenue loss for the government currently generated from the service charge paid in lieu of tips. However, it will improve the take home remuneration of the employees in this sector hence increase their families’ disposable income as well as their morale.

**Clauses 25 & 26 amend Sections 33 & 36 of the Act on fraudulent claim and cancellation of registration respectively:** The bill in clause 25 proposes to repeal the section 33 of the VAT Act on sanctions for falsifying tax refund claims since the sanctions for such an offence is adequately covered in the provisions of the Tax Procedure Act while clause 26 seeks to amend section 36 of the act to correct a cross referencing issue captured in the VAT Act.

**Clause 27 amends the First Schedule on Exemption supplies:** The bill Proposes to amend the First Schedule of the Act in Part 1 on Exempt Supplies by including in the list items such as; Raw materials used in the manufacture of animal feeds, Motor vehicles imported or purchased for direct and exclusive use in the implementation of official aid funded projects, Equipment and machinery, including motor vehicles, imported or purchased locally for official use by KDF, NPS and military supplies, Direction-finding compasses, instruments and appliances for aircrafts, Liquefied petroleum gas, wheat seeds, Museum and natural history exhibits and specimens and scientific equipment for public museums, and Chemicals, reagents, films, film strips and visual aid

equipment imported or purchased prior to clearance through the customs by the National Museums of Kenya.

Other goods included in the list are; taxable goods for the direct and exclusive use for the construction of recreational parks, upon recommendation by the cabinet secretary responsible for matters relating to recreational parks, Taxable goods for the direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon the recommendation by the CS responsible for health who shall issue the criteria to be used to determine eligibility for the exemption and lastly garments and leather footwear manufactured in an export processing zone at the point of importation however it excludes from the exempted list, the goods supplied to special economic zone enterprises, developers and operators licensed under the Special Economic Zones Act.

The bill also includes the following taxable services in the exempt services list; Entry fees into the national parks, Services offered by tour operators on commission, Taxable services for direct and exclusive use for the construction of recreational parks, Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities, however it excludes from exemption services list; taxable services for special economic zone enterprises, developers and operators licensed under the Special Economic Zones Act.

**Clause 28 amends the Second Schedule on Zero Rated supplies:** The bill also amends the second schedule on zero rated supplies by including in the list of zero rated items; Goods or taxable services to special economic zone enterprises and medicaments containing other antibiotics not put up in measured doses or in forms or packaging for retail sale however it excludes from the list medicaments of HS code 3303.20.00.

#### **4. AMENDMENTS TO THE TAX PROCEDURES ACT**

**Clause 29 amends Section 3 of the Principal Act on definitions:** This is for correction of wrong cross-referencing by proposing deletion of Section 13(1) and replacing with 9A is to make reference to the relevant provision of rule of the Income Tax (PAYE rules).

**Clause 30 proposes to amend Section 15 which provide for taxpayers tax representative:** It introduces the appointment of tax representative by non-resident person. Insertion of Section 15A as proposed in clause 30 enhances tax administration and will ensure that tax legislations are

efficiently and effectively enforced despite the geographical distance between the non-resident tax payers and the relevant tax agencies. This is meant to enhance tax compliance.

**Clause 31 amends Section 17 on duties of appointed person:** This is to correct a grammatical error where there is reference to the words “*person that*” instead of “*person shall*”.

**Clause 32 amends Section 19 which provides for application for tax agent license:** There is an introduction of the requirement to have a recommendation from Tax Agents Committee in processing of a registration application for tax agent license. It is meant to ensure that credible and most suitable persons are registered as tax agents given the crucial role they play to facilitate the achievement of the mandate of the revenue agency.

**Clause 33** too corrects the error in section 22(1) by replacing word “*meeting*” with the word “*writing*”. This concerns a notification that should be made in writing but not in meeting as currently wrongly captured.

**Clause 34 proposes to amend Section 24 under submission of tax returns:** Empowerment of Kenya Revenue Authority (KRA) to seek auxiliary information with the aim of pre-populating the i Tax system

**Clause 36 amends Section 37 of the Act which provides for tax relief due to doubt or difficulty in recovery:** there is a proposed introduction of tax amnesty for owners of assets and businesses outside Kenya who may wish to re-invest back into the country

**Clauses 35, 37, 39(b)** proposes amendments to set time limits in which the Commissioner is to respond to tax payers requests and claims as follows:

- i. Clause 35: Sets 30 days as the period in which the taxpayer is to be notified by the Commissioner on the request for extension of time in tax payment. This is on Section 33(3).
- ii. Clause 37 by inserting words within 30 days in section 42(7) sets time-frame in which the Commissioner is to respond to the payer upon being duly informed that the payer is unable to pay the amount.
- iii. Clause 39(b) proposes to set the time frame of 90 days for the tax payer to be notified on tax refunds claim.

**Clause 38 amends Section 42 to provide for appointment and revocation of Value Added Tax Withholding agents:** This is to reintroduce this provision that subsequent deletion in Tax Procedures Act 2015 purportedly deleted. With-holding tax is used to enhance tax compliance and to improve cash-flow to the exchequer.

**Clause 39 amends Section 47 on refund of over-paid tax:** There is a reduction of period in which overpaid tax is to be refunded from 1 year to 5 years. This is to give KRA more time to refund the overpaid tax. Since there is no provision of payment of periodic interest on the refunds, the purchasing power of the refunded money will be eroded due to inflationary forces thereby adversely affecting the tax payers eligible to such refunds.

**MIN.NO. DCF/268/2016: ADJOURNMENT**

The Chairperson adjourned the meeting at 12.05pm

Signed.....

**Vice Chairperson**

Date..... 10<sup>th</sup> Aug 2016

**MINUTES OF THE 70<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON TUESADAY 9TH AUGUST, 2016 IN THE COMMITTEE ROOM 2<sup>ND</sup> FLOOR, PROTECTION HOUSE, PARLIAMENT BUILDINGS AT 10.00AM**

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**PRESENT**

1. Hon. Nelson Gaichuhie, MP
2. Hon. Eng. Shadrack Manga, MP
3. Hon. Ronald Tonui, MP
4. Hon. Jones Mlolwa, MP
5. Hon. Mary Emase, MP
6. Hon. Abdul Rahim Dawood, MP
7. Hon. Sumra Irshadali, MP
8. Hon. Lati Lelelit, MP
9. Hon. Iringo Cyprian Kubai, MP
10. Hon. Shakeel Shabbir, MP
11. Hon. Dr. Oburu Oginga, MP
12. Hon. Sammy Mwaita, MP
13. Hon. Joseph Limo, MP
14. Hon. Patrick Makau King'ola, MP
15. Hon. Ogendo Rose Nyamunga, MP
16. Hon. Sakwa John Bunyasi, MP
17. Hon. Abdikadir Ore Mohammed, MP
18. Hon. Sammy Koech, MP

**Vice-Chairperson**

**APOLOGIES**

1. Hon. Benjamin Langat, MP
2. Hon. Jimmy Nuru Angwenyi, MP
3. Hon. Joash Olum, MP
4. Hon. Anyanga Andrew Toboso, MP
5. Hon. Daniel Epuyo Nanok, MP
6. Hon. Kirwa Stephen Bitok, MP
7. Hon. Abdullswamad Shariff, MP
8. Hon. Alfred Sambu, MP
9. Hon. Tiras Ngahu, MP
10. Hon. Dennis Waweru, MP
11. Hon. Sakaja Johnson, MP

**Chairperson**



## **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. Abdikadir Omar   | - | Fiscal Analyst        |
| 5. Mr. Thomas Ogwel     | - | Fiscal Analyst        |

### **MIN.NO. DCF/269 /2016: PRELIMINARIES**

The Vice- Chairperson called the meeting to order at 10. 30 am and prayed.

### **MIN.NO. DCF/270/2016: CONSIDERATION OF FINANCE BILL, 2016**

The Parliamentary Budget Office briefed the Committee on the Miscellaneous amendments as follows:-

#### **Clause 40: Retirement Benefits Act**

The bill proposes to amend section 29 of the Retirement Benefit Act, 1997 in subsection (2), (3) & (4) on regulation of pension schemes in order to provide for non-renewable perpetual licensing framework for institutions licensed by Retirement Benefit Authority (RBA). It also seeking to compel the managers, custodians and administrators of pension schemes to submit current audited financial statements, list of directors and top management, any changes in clientele by the 30th of September every year as well as changes in shareholding, directorship or top management within thirty days after the change has occurred.

The measures proposed under the amendments are meant to promote transparency and accountability in the operations of the institutions as well as remove the requirement of annual licensing.

#### **Clause 41: Kenya Revenue Authority Act**

The proposal seeks to amend the Second Schedule of the Kenya Revenue Act in paragraph 2 (1) on quorum of board meetings. It specifically amends the act to include the ex officio members in the raising of quorum for a meeting of the board.

#### **Clauses 42 - 44: Capital Markets Act**

The Bill proposes to amend Section 2, 12 and 23 of the Capital Markets Act, 2008 on the powers of the Capital Market Authority. The amendment introduced into the act provides for among things; the definition of “online forex broker”, it also empowers the capital market authority to

regulate and supervise online forex trading in order to facilitate effective and secure trading for the estimated 50,000 investors in the country in online forex trading. The amendment also seeks to compel the “online forex brokers” to acquire a valid licence as per the provisions of the Capital Markets Act, 2008.

This is likely to enhance proper regulation of the sector which has witnessed growing interest in online trading of foreign currency particularly among the youth and also allow the authority to generate revenue from licensing of the online forex brokers.

#### **Clauses 45 - 48: Banking Act**

The amendment Proposes to revise section 31 of the Banking Act in subsection (3)(b), (4), (5) and also insert a new subsection (6) so as to allow the incorporation of the SACCOs, and public utility companies and any other institution mandated to share credit information; into the credit information sharing framework as well as allow the cross border sharing of credit information amongst financial institutions.

This measures proposed in the Bill are meant to increase access to credit, reducing transaction costs, enhancing efficiency in financial intermediation and fostering financial stability through reduction in non-performing loans.

The Bill also proposes to amend section 34(2) of the banking act on the powers of the Central Bank of Kenya to intervene on management. It specifically seeks to compel the Central Bank of Kenya to consult the cabinet secretary in charge of the National Treasury when intervening on a company since the monetary policy aspect of the country rests with the National Treasury and therefore it is prudent for the Central Bank of Kenya to consult with the National Treasury to mitigate the adverse effect of such an intervention on the economy.

In addition, the Bill seeks to amend section 55(2) of the Banking Act on regulation of the banking sector. It specifically seeks to scale up the punitive measures that are in place for financial institutions or individuals that do not comply with the provisions of the Banking Act or prudential guidelines. The fines were increased from Kshs. 5 million to Kshs. 20 million for financial institutions and for the case of natural persons the fines were increased from two hundred thousand shillings to 1 million shillings.

Finally the Bill proposes to amend the Second Schedule of the Banking Act on core capital requirement for banks and mortgage finance institutions. It seeks to significantly increase the

Bank's or mortgage finance company's core capital requirement from KSh. 1 billion to KSh. 5 billion by 2019.

The measure is meant to increase the capitalization of banks in order to ensure we have a strong and stable banking system since such a move might lead to mergers giving rise to bigger conglomerates that are highly capitalized and perhaps capable of withstanding financial shocks and crises.

#### **Clause 49: Alcoholic Drinks Control Act**

The Bill seeks to amend section 68A of the Alcoholic Drinks Control Act, 2010 on tax policies so as to align the act with the provisions of the section 7(2) of the Excise Duty Act. The proposed amendment leaves to the discretions of the Cabinet Secretary when to grant remission on excise duty from beer or wine made of sorghum, millet or cassava unlike under the Alcoholic Drinks Control Act which was making it mandatory for the Cabinet Secretary to grant excise duty remission of **ninety per centum** so long the beer is made of sorghum, millet or cassava grown in Kenya.

#### **Clauses 50 – 51: Kenya Deposit Insurance Act**

The Bill proposes to amend Section 7 of the Kenya Deposit Insurance Act, 2012 on board nomination. It specifically seeks to exclude from direct board membership in the corporation's board persons from member institutions licensed by the Central Bank of Kenya and replaces them with the Chief Executive Officer of the Kenya Bankers Association.

The measure is to solve the possibility of conflict of interest among members of the board of directors of the Kenya Deposit Insurance Corporation so as to promote good corporate governance, transparency and accountability in the management of the corporation.

The Bill also seeks to amend Section 43 in subsection (1) of the Kenya Deposit Insurance Act, 2012 on the appointment of Kenya deposit Insurance Corporation as a receiver to provide for the involvement of the Cabinet Secretary in charge of National Treasury in the appointment of the corporation as a receiver. This is likely to take away the independence of the Central Bank of Kenya in the execution of its mandate since it is mandatory for it to consult the Cabinet Secretary.

#### **Clause 52: Public Finance Management Act**

The Bill proposes to amend the Public Finance Management Act in Section 193(4) on the tenure of the Accounting Standards Board members. It specifically provides for the appointment of

second term of three years for members of the Board. The measure is meant to preserve institutional memory and ensure continuity in the affairs of the board. However, the amendment seems to makes the renewal of the contracts mandatory.

**Clauses 53 – 58: Tax Appeals Tribunal Act**

The Bill amends the Tax Appeals Tribunal Act to provide for among other things the qualification of a secretary to the tribunal, procedure of appeals, procedure for submission of material document by the Commissioner General before the tribunal and the appellants and appellant’s representatives before a tribunal as well as the mode of appointment for a clerk to a tribunal panel.

The amendments are meant to streamline the Tax Appeals Tribunal Act, 2013 with a view to improve the effectiveness and the efficiency of the Tribunal in order for it to serve its clients in expeditious manner.

**Clause 59: Special Economic Zones Act**

The Bill proposes to amend Section 35 of the Special Economic Zones Act, 2015 on benefits accruing to special economic zone enterprises, developers and operators. The amendment removes the blanket tax exemptions with respect to the special economic zones under the Act and limits the benefits to targeted tax incentives as is or shall be provided in the respective tax laws.

**Members Concern/ Clarification**

The Parliamentary Budget Office was requested to provide further information on the proposals to amend the Kenya Revenue Act and Kenya Deposit Insurance Act. Specifically the one seeking to amend the Second Schedule of the Kenya Revenue Act on the quorum of the board meetings to include the ex officio members in the rasing of quorum for the board meeting.

**MIN.NO. DCF/271 /2016: ADJOURNMENT**

The Chairperson adjourned the meeting at 12.05pm

Signed.....

**Vice Chairperson**

Date..... 16<sup>th</sup> Aug 2016

MINUTES OF THE 72<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON TUESDAY 16<sup>TH</sup> AUGUST, 2016 IN COMMITTEE ROOM, 5<sup>TH</sup> FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00AM

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**PRESENT**

- |                                     |                         |
|-------------------------------------|-------------------------|
| 1. Hon. Nelson Gaichuhie, MP        | <b>Vice-Chairperson</b> |
| 2. Hon. Dr. Oburu Oginga, MP        |                         |
| 3. Hon. Shakeel Shabbir, MP         |                         |
| 4. Hon. Sammy Mwaita, MP            |                         |
| 5. Hon. Joash Olum, MP              |                         |
| 6. Hon. Abdullswamad Shariff, MP    |                         |
| 7. Hon. Patrick Makau King'ola, MP  |                         |
| 8. Hon. Mary Emase, MP              |                         |
| 9. Hon. Anyanga Andrew Toboso, MP   |                         |
| 10. Hon. Ogendo Rose Nyamunga, MP   |                         |
| 11. Hon. Lati Lelelit, MP           |                         |
| 12. Hon. Kirwa Stephen Bitok, MP    |                         |
| 13. Hon. Sumra Irshadali, MP        |                         |
| 14. Hon. Abdul Rahim Dawood ,MP     |                         |
| 15. Hon. Ronald Tonui, MP           |                         |
| 16. Hon. Abdikadir Ore Mohammed, MP |                         |

**APOLOGIES**

- |                                  |                    |
|----------------------------------|--------------------|
| 1. Hon. Benjamin Langat, MP      | <b>Chairperson</b> |
| 2. Hon. Alfred Sambu, MP         |                    |
| 3. Hon. Sakwa John Bunyasi, MP   |                    |
| 4. Hon. Jimmy Nuru Angwenyi, MP  |                    |
| 5. Hon. Iringo Cyprian Kubai, MP |                    |
| 6. Hon. Jones Mlolwa, MP         |                    |
| 7. Hon. Daniel Epuyo Nanok, MP   |                    |
| 8. Hon. Eng. Shadrack Manga, MP  |                    |
| 9. Hon. Tiras Ngahu, MP          |                    |
| 10. Hon. Dennis Waweru, MP       |                    |
| 11. Hon. Sakaja Johnson, MP      |                    |
| 12. Hon. Sammy Koech, MP         |                    |
| 13. Hon. Joseph Limo, MP         |                    |

## **KENYA NATIONAL ASSEMBLY**

- |                         |   |                       |
|-------------------------|---|-----------------------|
| 1. Mr. Nicodemus Maluki | - | Third Clerk Assistant |
| 2. Mr. Fredrick Otieno  | - | Third Clerk Assistant |
| 3. Mr. Josephat Motonu  | - | Fiscal Analyst        |
| 4. Ms. Emma Esendi      | - | Legal Counsel         |
| 5. Mr. Erick Ososi      | - | Research Officer      |

## **MIN.NO. DCF/276/2016: PRELIMINARIES**

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

## **MIN.NO. DCF/277/2016: CONFIRMATION OF MINUTES**

The minutes of the previous meetings were confirmed as follows:-

1. Minutes of the 45<sup>th</sup> Sitting held on Monday 23<sup>rd</sup> May, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Oburu Oginga, MP and Seconded by the Hon. Nelson Gaichuhie, MP respectively
2. Minutes of the 46<sup>th</sup> Sitting held on Monday 23<sup>rd</sup> May, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Oburu Oginga, MP and Seconded by the Hon. Nelson Gaichuhie, MP respectively
3. Minutes of the 47<sup>th</sup> Sitting held on Tuesday 24<sup>th</sup> May, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Oburu Oginga, MP and Seconded by the Hon. Nelson Gaichuhie, MP respectively
4. Minutes of the 48<sup>th</sup> Sitting held on Monday 24<sup>th</sup> May, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Patrick Makau, MP and Seconded by the Hon. Nelson Gaichuhie, MP respectively
5. Minutes of the 49<sup>th</sup> Sitting held on Thursday 26<sup>th</sup> May, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Abdul Rahim Dawood, MP and Seconded by the Hon. Ogendo Rose Nyamunga, MP respectively
6. Minutes of the 50<sup>th</sup> Sitting held on Tuesday 7<sup>th</sup> June, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Shakeel Shabbir, MP and Seconded by the Hon. Dr. Oburu Oginga, MP respectively
7. Minutes of the 51<sup>st</sup> Sitting held on Thursday 9<sup>th</sup> June, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Shakeel Shabbir, MP and Seconded by the Hon. Ogendo Rose Nyamunga, MP respectively

8. Minutes of the 52<sup>nd</sup> Sitting held on Thursday 16<sup>th</sup> June, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Abdul Rahim Dawood, MP and Seconded by the Hon. Ogendo Rose Nyamunga, MP respectively
9. Minutes of the 53<sup>rd</sup> Sitting held on Tuesday 21<sup>st</sup> June, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Ogendo Rose Nyamunga, MP and Seconded by the Hon. Shakeel Shabbir, MP respectively
10. Minutes of the 58<sup>th</sup> Sitting held on Saturday 25<sup>th</sup> June, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Anyanga Andrew Toboso, MP and Seconded by the Hon. Nelson Gaichuhie, MP respectively
11. Minutes of the 59<sup>th</sup> Sitting held on Tuesday 27<sup>th</sup> June, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Abdikadir Ore Ahmed, MP and Seconded by the Hon. Nelson Gaichuhie, MP respectively
12. Minutes of the 60<sup>th</sup> Sitting held on Thursday 29<sup>th</sup> June, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Abdikadir Ore Ahmed, MP and Seconded by the Hon. Abdul Rahim Dawood, MP respectively
13. Minutes of the 61<sup>st</sup> Sitting held on Tuesday 5<sup>th</sup> July, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Patrick Makau, MP and Seconded by the Hon. Abdikadir Ore Ahmed, MP respectively
14. Minutes of the 62<sup>nd</sup> Sitting held on Tuesday 19<sup>th</sup> July, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Abdul Rahim Dawood, MP and Seconded by the Hon. Dr. Oburu Oginga, MP respectively
15. Minutes of the 63<sup>rd</sup> Sitting held on Thursday 21<sup>st</sup> July, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Oburu Oginga, MP and Seconded by the Hon. Abdikadir Ore Ahmed, MP respectively
16. Minutes of the 64<sup>th</sup> Sitting held on Tuesday 26<sup>th</sup> July, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Dr. Oburu Oginga, MP and Seconded by the Hon. Shakeel Shabbir, MP respectively
17. Minutes of the 65<sup>th</sup> Sitting held on Tuesday 26<sup>th</sup> July, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Nelson Gaichuhie, MP and Seconded by the Hon. Ogendo Rose Nyamunga, MP respectively

18. Minutes of the 66<sup>th</sup> Sitting held on Wednesday 27<sup>th</sup> July, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Shakeel Shabbir, MP and Seconded by the Hon. Abdikadir Ore Ahmed, MP respectively
19. Minutes of the 67<sup>th</sup> Sitting held on Thursday 28<sup>th</sup> July, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Ogendero Rose Nyamunga, MP and Seconded by the Hon. Shakeel Shabbir, MP respectively
20. Minutes of the 68<sup>th</sup> Sitting held on Tuesday 2<sup>nd</sup> August, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Nelson Gaichuhie, MP and Seconded by the Hon. Dr. Oburu Oginga, MP respectively
21. Minutes of the 69<sup>th</sup> Sitting held on Thursday 4<sup>th</sup> August, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Oburu Oginga, MP and Seconded by the Hon. Anyanga Andrew Toboso, MP respectively
22. Minutes of the 70<sup>th</sup> Sitting held on Tuesday 9<sup>th</sup> August, 2016 were confirmed as a true record of the proceedings after being proposed by the Hon. Abdikadir Ore Ahmed, MP and Seconded by the Hon. Shakeel Shabbir, MP respectively

**MIN.NO. DCF/278/2016: ADOPTION OF THE REPORT ON THE FINANCE BILL, 2016**

Having considered the report, the Committee unanimously adopted the report.

**MIN.NO. DCF/279/2016: ANY OTHER BUSINESS**

There being no other business, the meeting was adjourned 11.50am.

**Signed**.....

**Chairperson**

**Date**.....



DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

MEMBERS ATTENDANCE REGISTER

DATE 16/08/2016 TIME 10:00 am

AGENDA ADOPTION OF THE REPORT AND RECOMMENDATIONS  
~~OF THE~~ BILL, 2016.

	NAME	TITLE	SIGNATURE
1	Nelson Gaudinwa	Chair	
2	Hon. Dr. Obami Ojigbo	member	
3	Hon. Patrick Mwan	member	
4	Hon. ABDIKADIR OLE	member	
5	Hon. Andrew Toboso Anyanga	Member	
6	Hon. Shaheel Shaheen Ahmed Mulla	Member	
7	Hon. Rose Nyamunya	"	
8	Hon. A. Rahim Nawood	"	
9	Hon. Samy Mwigita	"	
10	Hon. Lato Lelent	"	
11	Hon. IASHAD Sumra	"	
12	Hon. RONALD TAVEL	"	
13	Hon. ANNY TANGASE	"	
14	Hon. JOSE OLUM	"	
15	Hon. A. S. S. S.	"	
16	Hon. Kina S. B. Olo	"	
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