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REPUBLIC OF KENYA

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18/6/2020.

THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (FOURTH SESSION)

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING
.....

REPORT ON THE CONSIDERATION OF THE FINANCE BILL, 2020

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DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2020

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CHAIRPERSON'S FOREWORD

This report contains the Committee's proceedings on the consideration of the Finance Bill (National Assembly Bills No. 10 of 2020) which was published on **5th May, 2020** and read a First Time on **Wednesday, 6th May, 2020** and committed to the Departmental Committee on Finance and National Planning pursuant to Standing Order 127.

The Bill seeks to amend the following laws; the Income Tax Act (Cap. 470), the Value Added Tax Act No. 35 of 2013, the Excise Duty Act No. 23 of 2015, the Tax Procedures Act No. 29 of 2015, the Miscellaneous Fees and Levies Act No. 29 of 2016, the Tax Appeals Tribunal Act No. 40 of 2013, the Public Roads Toll Act (Cap. 407), the Capital Markets Act (Cap. 485A), the Insurance Act (Cap. 487), the Standards Act (Cap. 496), the Road Maintenance Levy Fund Act No. 7 of 1993, the Kenya Revenue Authority Act No. 2 of 1995, the Retirement Benefits Act No. 3 of 1997 and the Insolvency Act No. 18 of 2015. Out of all the aforementioned pieces of legislations, the Departmental Committee on Transport, Roads, Public Works and Housing considered the Road Maintenance Levy Fund Act No. 7 of 1993 and the Public Roads Toll Act (Cap. 407) while the Departmental Committee on Justice and Legal Affairs considered the Insolvency Act No. 18 of 2015.

In line with Article 118 of the Constitution, the Committee through the Clerk of the National Assembly placed an advert in the print media on Friday, 8th May, 2020 inviting members of the public to present any comments or views on the Bill. By the time the Committee was considering the Bill, the Committee had a total of forty (40) memoranda from stakeholders. The Committee put all the stakeholders' comments into consideration while preparing the proposed Committee's amendments and some of the proposals were adopted forming part of the proposed Committee's amendments.

On behalf of the Departmental Committee on Finance and National Planning 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 (N.A. Bills No. 10 of 2020). 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 further wishes to thank all the stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Finance Bill (N.A. Bills No. 10 of 2020) and have the honour to report back to the National Assembly with the recommendation that the Bill should be **approved with amendments**.

Hon. Joseph Limo, M.P.

Chairperson, Departmental Committee on Finance and National Planning

1 PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:
 - a. To 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. To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
 - c. **To study and review all the legislation referred to it;**
 - d. To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - e. To 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. To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
 - g. To examine treaties, agreements and conventions;
 - h. To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - i. To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - j. To examine any questions raised by Members on a matter within its mandate.

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following Government Ministries and Departments:-
 - a. The National Treasury and Planning
 - b. State Department for Devolution
 - c. The Commission on Revenue Allocation (CRA)
 - d. Office of the Controller of Budget
 - e. Salaries and Remuneration Commission (SRC)

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1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members:-

Chairperson

Hon. Joseph K. Limo, MP
MP for Kipkelion East Constituency

Jubilee Party

Vice-Chairperson

Hon. Isaac W. Ndirangu
M.P for Roysambu Constituency

Jubilee Party

Members

Hon. Jimmy O. Angwenyi, MP
MP for Kitutu Chache North Constituency

Jubilee Party

Hon. Christopher Omulele, MP
MP for Luanda Constituency

ODM Party

Hon. Dr. Enoch Kibunguchy, MP
MP for Likuyani Constituency

FORD-K

Hon. Shakeel Shabbir Ahmed, MP
MP for Kisumu Town East

Independent Member

Hon. Abdul Rahim Dawood, MP
MP for North Imenti Constituency

Jubilee Party

Hon. Daniel E. Nanok, MP
MP for Turkana West Constituency

Jubilee Party

Hon. Andrew A. Okuome, MP
MP for Karachuonyo Constituency

ODM Party

Hon. David M. Mboni, MP
MP for Kitui Rural Constituency

CCU Party

Hon. Francis K. Kimani, MP
M.P. Molo Constituency

Jubilee Party

Hon. Joseph M. Oyula, MP
MP for Butula Constituency

ODM Party

Hon. Joshua C. Kandie, MP
MP for Baringo Central Constituency

MCC Party

The Hon. Lydia H. Mizighi, MP
MP for Taita Taveta County

Jubilee Party

Hon. Mohamed A. Mohamed, MP
MP for Nyali Constituency

Independent Member

Hon. Purity W. Ngirici, MP
MP for Kirinyaga County

Jubilee Party

Hon. Samuel Atandi, MP
MP for Alego Usonga Constituency

ODM Party

Hon. Stanley M. Muthama, MP
MP for Lamu West Constituency

MCC Party

The Hon. Edith Nyenze, MP
MP for Kitui West Constituency

WDM-K

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following Members of the Secretariat:-

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Head of the Secretariat
Ms. Leah W. Mwaura
Senior Clerk Assistant

Ms. Jennifer Ndeto
Principal Legal Counsel I

Ms. Laureen Wesonga
Clerk Assistant II

Mr. Josephat Motonu
Fiscal Analyst I

Mr. Chelang'a Maiyo
Research Officer II

Mr. John Njoro
Serjeant-At-Arms

Ms. Euridice Nzioka
Audio Officer

2.1 ANALYSIS OF THE BILL

The Finance Bill, 2020 seeks to amend the following tax laws:-

The Income Tax Act (Cap. 470)

The proposed amendments to the Income Tax Act (ITA) are covered in clauses 2 to 9 of the Bill. The following are key highlights of the proposed amendments:-

6. **Extending the upper limit of the Residential Rental Income Tax** (clause 2): the simplified monthly income tax became effective January 2016 where residential rental income tax became applicable for annual rental income of between KSh. 144,000 to KSh. 10 million. The amendment shifts the upper limit from KSh. 10 million to KSh. 15 million. The aim of this proposed amendment is to extend the upper limit so as to grant landlords with rental income of between KSh. 10 million and KSh. 15 million the more concessional tax rate of 10% of gross income, and reduce administrative costs of ascertaining profit for such landlords. From this proposal, the National Treasury is seeking to raise an additional Kenya Shillings two hundred (200) million to finance the deficit in the 2020/21 FY budget.
7. **Introduction of Minimum Tax** (clauses 3, 4, 7 and 9): a new tax to be known as minimum tax is proposed to be introduced at the rate of 1% of the gross turnover. The proposed amendment is to introduce a minimum tax which shall apply to all persons whether they are making profits or incurring losses. This new tax is intended to raise revenue and also cushion businesses whose incomes have declined due to the COVID-19 pandemic. This new tax captures the taxation neither of an income that is exempt nor from employment, residential rental, turnover, gains from property and extractives. A comparative study across the world shows that several countries including Tanzania apply minimum tax on the turnover. The introduction of this tax measure will finance the deficit for 2020/21 FY by approximately KSh. 21 billion.
8. **Introduction of Digital Service Tax** (clauses 4, 7 and 9): a new tax known as digital service tax is proposed to be introduced at the rate of 1.5% of the gross transaction value. It shall be payable by persons who derive income from provision of services through the digital market place. This tax targets non-residents without permanent establishments in Kenya. This is because for both resident and non-resident persons with permanent establishment in Kenya, this tax shall be offset from the tax payable for the year of income. This tax is expected to yield an additional KSh. 2 billion.
9. **Removal of existing allowable deductions** (clauses 5 and 6): the Bill proposes to remove seven types of allowable deductions from the income tax law. The Bill proposes to remove:-
 - i. Entrance fee or annual subscription paid during that year of income to a trade association which has made an election under Section 21(2) of this Act;
 - ii. Expenditure of capital nature incurred in that year of income by a person, on legal costs and other incidental expenses, relating to authorization and issue of shares, debentures and similar securities offered for purchase by the general public;
 - iii. Expenditure of capital nature incurred in that year of income by a person, on legal costs and other incidental expenses, for purposes of listing on any securities exchange operating in Kenya, without raising additional capital;
 - iv. Expenditure of capital nature incurred in that year of income by a person on rating for the purpose of listing on any securities exchange operating in Kenya;
 - v. Club subscription paid by an employer on behalf of an employee;

- vi. Expenditure of capital nature incurred in that year of income with prior approval by the Cabinet Secretary, by a person on the construction of a public school, hospital, road or any similar kind of social infrastructure; and
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10. From the abovementioned measures, the National Treasury proposes to reduce tax expenditure by close to KSh. 3 billion which will go along to finance the budget deficit for 2020/21 FY.
11. **Removal of existing tax incentive, that is, income exempt from tax** (clause 8): the following existing income that is exempt from tax are proposed to be removed from the exemption list:-
- Income of a registered home ownership savings plan;
 - Income of National Social Security Fund (NSSF); and
 - Bonus, overtime and retirement benefits not exceeding 10%.

The Value Added Tax (VAT) Act No. 35 of 2013

The proposed amendments to the VAT Act are covered in clauses 10 to 12 of the Bill 2020. In summary, the key proposed amendments include:-

12. **A new condition for claiming input VAT** (clause 10): the proposed amendment introduces a new condition (requiring taxpayers to ensure their suppliers declare their invoices in the tax return) for them to qualify to claim the input VAT.
13. **Items to be removed from VAT exemption list** (clause 11): some items that are currently in the VAT exemption list have been proposed to be removed from the list so as to apply the standard rate of 14%. They include:-
- Some helicopters and aeroplanes not exceeding 2,000 kg;
 - Tractors, other than road tractors for semi-trailers;
 - Aircraft pneumatic tires;
 - Goods for clean cooking stoves;
 - Stoves, cookers, barbecues;
 - One motor vehicle imported by a returning public officer from foreign posting;
 - Plant, machinery and equipment for the construction of plastic recycle plant; and
 - Services such as hiring of helicopters.
14. The removal of the above mentioned items from VAT exemption to standard is expected to yield close to KSh. 8 billion.
15. Maize (corn) seeds as well as ambulance services have been exempted from Value Added Tax and this is going to result to a tax expenditure of approximately KSh. 20 million.
16. **Removal of some items from VAT Zero rated category** (clause 12): the liquefied petroleum gas and materials for the manufacture of automotive and solar batteries have been proposed to be removed from VAT zero rate list. The removal from the zero-rating category will reduce tax expenditure by KSh. 320 million.

The Excise Duty Act No. 23 of 2015

The proposed amendments to the Excise Duty Act are covered in clauses 13 and 14 of the Bill. In summary, the key proposed amendments include:-

17. **Reduction of the threshold for alcohol strength from over 10% to 8% for tax purposes** (clause 14): the amendment proposes to reduce the threshold of alcohol strength in beer and spirits from the current, exceeding 10% to exceeding 8%. The National Treasury expects to raise KSh. 1.5 billion with this measure.

The Tax Procedures Act No. 29 of 2015 (TPA)

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The proposed amendments to the Act are covered in clauses 15 and 16 of the Bill. In summary, the key proposed amendments include:-

18. **Introduction of voluntary tax disclosure programme** (clause 15): this clause seeks to introduce this programme as a form of amnesty for taxpayers who may choose to disclose their tax liability from July 2015 to July 2020 for the purpose of being granted relief from paying penalty and interest. The amnesty will be granted at 100% waiver of penalty and interest if payment of assessed or disclosed tax is paid in the first year of being granted relief, 50% in the second year and 25% in the third year. Finally, this amnesty shall not apply to ongoing processes such as audit, investigation or litigation. With this programme and necessary systems, KSh. 300 million is expected to be realized.
19. **Provides for appointment of digital tax service agent** (clause 16): the proposed amendment seeks to provide for the appointment of digital tax service agent to collect the digital service tax which is proposed to be introduced under clause 4. It also provides for revocation of the appointment.

The Miscellaneous Fees and Levies Act No. 29 of 2016

The proposed amendments to the Act are covered in clauses 17 to 19 of the Bill. The key proposed amendments include:-

20. **Change of Import Declaration Fee for goods imported under the East African Community (EAC) Duty Remission Scheme** (clause 17): the Import Declaration Fee (IDF) for goods imported under the East African Community Duty Remission Scheme is proposed to be increased from the current KSh. 10,000 at the point of entry for home use to 1.5% of the customs value. The move is expected to raise additional revenue of close to KSh. 1.2 billion.
21. **New duty on goods for home use from Export Processing Zone (EPZ)** (clause 18): a new duty has been proposed to be introduced at the rate of 2.5% of the customs value on goods entered for home use from an EPZ enterprise. This is meant to raise additional revenue and may also help cushion firms that make related items outside the EPZ from unfair pricing. Kenyans will also be able to access high quality EPZ goods which are ordinarily made for the export markets.
22. **Removal of tax incentives** (clause 19): helicopters and small aircrafts of unladen weight not exceeding 2,000 kg have been proposed to be removed from Import Declaration Fees exemption. The other one is the removal of exemption for goods under the implementation of Special Operating Framework Arrangement (SOFA) with government. The measure will raise KSh. 771 million.
23. Introduction of Import Declaration Fees exemption on all goods imported for official use by the Kenya Defense Forces and the National Police Service. The other one is the introduction of Railway Development Levy (RDL) exemption on currency and coins imported by the Central Bank of Kenya and all goods imported for official use by the Kenya Defense Forces and the National Police Service. The exemption is expected to yield to a tax expenditure of KSh. 150 million.

The Tax Appeals Tribunal Act No. 40 of 2013 (clause 20)

24. The proposed amendment clarifies the procedure for appeal by restricting introduction of additional documents at the stage of Tribunal hearing. This information, if it was availed to the Commissioner during the determination of the tax objection, may be the decision made by the Commissioner would have been different. Submission of documents at the objection stage ensures that the Commissioner makes an informed decision at the objection stage. The proposed amendment is meant to enhance compliance and minimize prolonged dispute resolution process if new document/evidence is submitted at the Tribunal stage.

The Public Roads Toll Act (Cap. 407)

25. In clause 21, the proposal seeks to amend the definition of toll collector to mean that s/he **PDF Compressor Free Version** implies that agreements can be signed with public or private persons for the purpose of collecting the toll charges. The proposal in clause 23 seeks to remove the requirement for laying the agreements for road management in the National Assembly for approval.
26. Clause 24 introduces a proviso that deals with levying of tolls pursuant to agreements to provide for an alternative arrangement for levying, collection and management of toll infrastructure. Clause 25 establishes a public fund to be known as the National Roads Toll Fund that shall be established in accordance with Section 24 of the Public Finance Management Act, 2012.

The Capital Markets Act (Cap. 485A)

27. In the year 2015, the Investment Guidelines under the Retirement Benefits Regulations were amended to allow pension schemes to invest up to 10% of their assets in private equity funds and venture capital funds licensed by the Capital Markets Authority. However, the Capital Markets Act was not amended to provide for the same. The amendment therefore in clause 27 seeks to introduce an additional function to the Capital Markets Authority (CMA) which is the agency in-charge of regulation and oversight of private equity and venture capital firms (pension scheme funds) that have access to public funds.
28. Clause 28 proposes to amend the Act to remove the function of payment of beneficiaries from unclaimed dividends, from the Investor Compensation Fund (ICF). This is because unclaimed dividends are currently domiciled under the Unclaimed Financial Assets Authority (UFAA) and therefore not a function under the Capital Markets Act.

The Insurance Act (Cap. 487)

29. This amendment proposes to amend Section 204A of the Act so as to provide a timeline of 30 days within which any appeal against a decision by the Commissioner of Insurance may be lodged at the Tribunal. Section 204A (3) was introduced through the Insurance (Amendment) Act (No. 11 of 2019). However, the section creates uncertainty and ambiguity because it does not stipulate the period within which an appeal to the Tribunal may be filed. The proposed amendment intends to remove ambiguity under the Insurance Act thereby bringing certainty in the period within which an appeal can be lodged to the Tribunal.

The Standards Act (Cap. 496)

30. Cargo consolidation was introduced in the Finance Act, 2019. The Bill therefore, seeks to amend the definition of consolidator to change the current scenario where consolidated goods from the origin are declared and cleared at the destination by one person, still consolidated, to a new shift where goods are deconsolidated for individual consignees to carry out their own declaration for customs purposes.

The Road Maintenance Levy Fund Act No. 7 of 1993

31. The Act is amended to remove the proceeds of the transit tolls from being paid into the Road Maintenance Levy Fund. This is because clause 25 is seeking to establish a National Roads Toll Fund into which proceeds of tolls shall be paid.

The Kenya Revenue Authority Act No. 2 of 1995

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32. Clause 32 introduces a new function to the Kenya Revenue Authority (KRA) which is to establish an institution for the purpose of providing capacity building and training for the better carrying out of the Authority's functions.
33. Clause 33 proposes to introduce a new source of funds to KRA as being the agency fees paid for collecting revenue on behalf of a county government or government agency, provided that it does not exceed 2% of the total revenue collected.
34. Clause 35 of the Bill gives the Kenya Revenue Authority powers to make regulations with respect to capacity building and training.

The Retirement Benefits Act No. 3 of 1997

35. The amendment seeks to provide for a penalty of KSh. 100,000 for scheme trustees who may fail to submit actuarial reports to the Retirement Benefits Authority. There shall also be additional an KSh. 1,000 for each day the actuarial report is not submitted.

The Insolvency Act No. 18 of 2015

36. The proposed amendment seeks to introduce tax revenue by the Kenya Revenue Authority held in a bank that is under receivership or liquidation as second preferential claim. This is meant to reduce the risk of exposure of government revenue collected by KRA and held in banks.

2.2 CONSIDERATION OF THE BILL

37. The Bill is an omnibus Bill which proposes amendments to various statutes. The proposed amendments were considered by three Departmental Committees under whose mandate the statutes to be amended fall and the report was compiled by the Departmental Committee on Finance and National Planning. The proposed amendments were considered by the following Committees:-

2.2.1 Finance and National Planning

38. The Departmental Committee on Finance and National Planning considered amendments proposed to the following statutes:-
 - i. the Income Tax Act (Cap. 470);
 - ii. the Value Added Tax Act No. 35 of 2013;
 - iii. the Excise Duty Act No. 23 of 2015;
 - iv. the Tax Procedures Act No. 29 of 2015;
 - v. the Miscellaneous Fees and Levies Act No. 29 of 2016;
 - vi. the Tax Appeals Tribunal Act No. 40 of 2013;
 - vii. the Capital Markets Act (Cap. 485A);
 - viii. the Insurance Act (Cap. 487);
 - ix. the Standards Act (Cap. 496);
 - x. the Kenya Revenue Authority Act No. 2 of 1995; and
 - xi. the Retirement Benefits Act No. 3 of 1997

2.2.2 Transport, Public Works and Housing

39. The Departmental Committee on Transport, Public Works and Housing considered the following statutes:-
 - i. the Public Roads Toll Act (Cap. 407); and
 - ii. the Road Maintenance Levy Fund Act No. 7 of 1993

2.2.3 Justice and Legal Affairs

40. The Departmental Committee on Justice and Legal Affairs considered proposed amendments to the Insolvency Act No. 18 of 2015.

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3 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

41. Following the call for memoranda from the public through the placement of adverts in the print media on **Friday, 8th May, 2020** requesting for comments from the public on the Bill, the Committee received memoranda from the following stakeholders:-
- i. Kenya Renewable Energy Association (KEREAA)
 - ii. Petroleum Institute of East Africa (PIEA)
 - iii. Kenya Breweries Limited and UDV (Kenya) Limited
 - iv. Kenya Breweries Limited (KBL) & UDV (Kenya) Limited, Coca-Cola Beverages Africa, Kenya Wine Agencies Limited (KWAL) and Trufoods Limited
 - v. Federation of Kenya Pharmaceutical Manufacturers (FKPM)
 - vi. PKF Taxation Services Limited
 - vii. Institute of Certified Public Accountants of Kenya (ICPAK)
 - viii. Kenya Bankers Association (KBA)
 - ix. KPMG Advisory Services Limited
 - x. Oxygène
 - xi. Association of Retirement Benefits Schemes (ARBS)
 - xii. Agrochemicals Association of Kenya (AAK)
 - xiii. African Salihya Cargo and Cleaning (ASCC)
 - xiv. Mantrac Kenya Limited, Achelis Kenya Limited, Car and General (Trading) Limited, Ess Equipment Kenya Limited, Rockplant Kenya Limited, Necst Motors Kenya Limited, Regal Equipment Limited and Ganatra Plant and Equipment Limited (JCB)
 - xv. Cereal Millers Association (CMA)
 - xvi. Fund Managers Association (FMA)
 - xvii. IPF Kenya
 - xviii. Golden Gate Cargo Services Company Limited
 - xix. Olsuswa Energy Limited
 - xx. Salihya Cargo and Shipping Agency
 - xxi. Kenya Association of International Cargo Consolidators (KAICC)
 - xxii. Mr. James T. Makori
 - xxiii. Hon. Purity Ngirici, MP
 - xxiv. Anjarwalla and Khanna LLP
 - xxv. PricewaterhouseCoopers Limited (PWC)
 - xxvi. Independent Power Producers (IPPs)
 - xxvii. Kenya Association of Manufacturers (KAM)
 - xxviii. Kenya Private Sector Alliance (KEPSA)
 - xxix. Uber Kenya Limited
 - xxx. Baker Mckenzie
 - xxxi. Bolt Support (K) Limited
 - xxxii. National Social Security Fund (NSSF)
 - xxxiii. Kenya Climate Change Working Group
 - xxxiv. Kenya National Chamber of Commerce and Industry (KNCCI)
 - xxxv. Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works
 - xxxvi. Koko Networks
 - xxxvii. Shade.co.ke
 - xxxviii. American Chamber of Commerce, Kenya (AmCham Kenya)
 - xxxix. Office of the Attorney General
 - xl. National Treasury and Planning

The stakeholders submitted as follows:-

3.1 KENYA RENEWABLE ENERGY ASSOCIATION (KEREAA)

42. In their memorandum Ref: KEREAA/2020.05.12B dated 12th May, 2020, they opposed the amendment of Paragraph 45 of the First Schedule of the VAT Act because the imposition of VAT on solar powered development and generation equipment will erode the gains that have been made in the country towards the achievement of universal energy access by 2022.

Committee's Observation

The amendment will protect local manufacturers. Paragraph 48 exempts inputs for the manufacture of solar equipment.

3.2 PETROLEUM INSTITUTE OF EAST AFRICA (PIEA)

43. In their memorandum Ref:PIEA/ADMIN 27B dated 14th May, 2020, they submitted that they were opposed to the amendment proposed on clause 13 of the Bill and proposed that Liquefied Petroleum Gas (LPG) and propane should remain zero rated because imposing VAT on LPG will adversely affect Kenya's aspired socio-economic transformation considering the positive impact of LPG on human health, environment conservation, local manufacturing and food security. **(Their proposal was adopted by the Committee).**
44. They proposed that import duty for 3811.21.00 Additives for lubricating oils: containing petroleum oils or oils obtained from bituminous minerals should be reviewed from 10% to 0% and the import duty for 3811.29.00 Other (Proposal to change current description from "other" to additives for lubricating oils: containing synthetic oils) should be reduced to 0%. This will have a favourable impact on lubricant prices for consuming sectors.

Committee's Observation

The proposal to split the tariff shall be considered in the ongoing Common External Tariff (CET) review process. The proposal to remove import duty on base oils and to remove import duty on lubricant additives shall be in the comprehensive CET review.

3.3 KENYA BREWERIES LIMITED AND UDV (KENYA) LIMITED

45. In their memorandum dated 19th May, 2020, they proposed that Section 10 of the Excise Duty Act should be amended by deleting the word "shall" immediately after the word "Commissioner" and replacing with the word "may" and by deleting the words "once every year" appearing immediately after the words "specific rate of excise duty" and replacing with the words "every two years". This is because an increase in excise tax on alcohol will undermine alcohol manufacturers' capacity for production and distribution of alcohol beverages which supports micro, small and medium enterprises. **(This proposal was adopted by the Committee).**

3.4 KENYA BREWERIES LIMITED (KBL) & UDV (KENYA) LIMITED, COCA-COLA BEVERAGES AFRICA, KENYA WINE AGENCIES LIMITED (KWAL) AND TRUFOODS LIMITED

46. In their memorandum dated 19th May, 2020, they proposed an amendment to the First Schedule to the Excise Duty Act to remove the 25% excise duty on imported glass bottles because glass users have demonstrated their readiness to support the sourcing of glass locally and are prepared to partner with the government in upscaling the industry. However,

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the tax does not aid to achieve this and is instead a punitive measure that will only serve to increase the cost and burden of doing business in the country.

Committee's Observation

The Committee noted that consultations need to be done between stakeholders in the glass bottles industry, the National Treasury and the Committee in order to chart the way forward with regards to the proposal.

3.5 FEDERATION OF KENYA PHARMACEUTICAL MANUFACTURERS (FKPM)

47. In their memorandum Ref.FKPM/096/05/2020/CNA dated 20th May, 2020, the Federation was opposed to the VAT exemption of medicaments and vaccines as amended in the Tax Laws Act, 2020 and proposed that they should be zero-rated because the inability to claim VAT on inputs will increase operating and production costs of locally manufactured medicaments and vaccines hence make them uncompetitive in the local and international market.

Committee's Observation

The taxation policy on VAT is to limit exemptions to critical essential goods and services in order to help minimize the tax expenditures.

3.6 PKF TAXATION SERVICES LIMITED

In their memorandum Ref.PKFTAX/NA-2/2020/mkm/jm dated 21st May, 2020, they proposed the following amendments to the Bill:-

Income Tax Act

48. Opposed the amendment proposed to section 12(D) of the Act because the proposal as currently drafted will be against section 3 of the Act which is very clear that income chargeable to tax is only in respect to gains or profit from a business for whatever period of time carried on.

Committee's Observation

The purpose of introducing minimum tax is to ensure that companies that are on perennial losses contribute towards provision of infrastructure by the Government.

49. They also opposed the amendment proposed to section 22C of the Act because it will discourage depositors from saving towards home ownership.

Committee's Observation

There has been a low uptake of Home Ownership Savings Plan (HOSP) because most people prefer arrangements that allow for occupation of a house while paying for it rather than saving to buy a house. Additionally, the Government has introduced various affordable housing initiatives such as affordable housing scheme relief and mortgage interest deduction to encourage individuals to own a home which is what most individuals would prefer.

50. Additionally, they opposed the deletion of Paragraphs 44, 45 and 53 of the First Schedule to the Act because they go against the government's Big 4 Agenda on affordable housing, subjecting income of NSSF to tax will have a negative impact on the interest earned by members and the introduction of taxes to pension will discourage savings into pension schemes. **(Their proposals on paragraph 45 and 53 were adopted by the Committee).**

51. Finally, they opposed the amendment proposed to section 15 of the Act because the restriction of the deductibility of expenses incurred on social infrastructure may lead to corporates going slow on corporate social responsibility activities. **(This proposal was not adopted by the Committee)**

Tax Procedures Act

52. They proposed the following amendments to section 37 of the Act, “Provide a 30% abandonment of the principal tax over and above the full waiver of penalties and interest”; “Provide for a 3-year payment plan for principal tax payable without a further accumulation of penalties and interest”; and “Provide for one hundred percent remission for penalties and interests despite the year of settlement of the principal taxes”. This is because a favourable payment plan will ensure that taxpayers can comfortably meet their past tax liabilities while honouring the current tax liabilities.

Committee’s Observation: This will lead to revenue loss.

Value Added Tax Act

53. Did not support the amendment proposed to section 17 of the Act because the VAT Act and VAT Regulation No. 9 lay out the legal requirement for taxpayers to follow when accounting for input VAT as a credit in any particular transaction. The proposal in the Bill is therefore not practical because it will introduce administrative challenges where purchasers would have to keep checking with suppliers before they can claim input VAT. **(Their proposal was adopted by the Committee)**.
54. Additionally, they supported the amendment proposed to Part I of the First Schedule to the Act except, “*Specialised equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power and*”; “*Supply of liquefied petroleum gas including propane*”; “*Plant, machinery and equipment used in the construction of a plastics recycling plant*”; and “*Tractors other than road tractors for semitrailers*”. This is because the proposed amendment will make these products very expensive to the final consumers and will hinder power development in the rural areas.

3.7 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

In their memorandum, the Institute submitted that:-

Income Tax Act

55. Amend section 6A of the Act by deleting the words “one hundred and forty four thousand” and replacing with the words, “one million”. This is to make it consistent with the amendments made in the Tax Laws (Amendment) Act, 2020 and to enhance equity in tax administration. **(Their proposal was adopted by the Committee)**.
56. They also proposed deletion of the new section 12D(1) because it is ill timed given the current economic conditions necessitated by COVID-19.
- Committee’s Observation**
The purpose of introducing minimum tax is to ensure that companies that are on perennial losses contribute towards provision of infrastructure by the Government.
57. They further proposed that section 12E should be amended by inserting the word “*non-resident*” immediately before the word “*person*”. This is to tax income of non-residents derived from Kenya and avoid over taxation and clarity in implementation.

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Committee's Observation

The framework provides that the resident companies and the non-resident companies with permanent establishments will offset the digital service tax against other taxes. This will therefore be a form of an advance tax to be offset when making annual returns for residents.

58. Amendments proposed in clause 5 should be deleted so that they are in line with the legislative process and parliamentary procedures. They further proposed that section 15(2)(h) of the Act should be amended as follows, "An entrance fee or annual subscription paid during that year of income to a trade association". They stated that there is need for a national tax policy for certainty of the matter. This is to allow for freedom of association as guaranteed under Article 36 of the Constitution.

Committee's Observation

The expenditure incurred by companies by making such payments is not wholly or exclusively incurred in the production of income as envisioned under section 15 of the Income Tax Act. Additionally, the expense is for the personal benefit of an individual and not a company.

59. They also proposed that section 15(2)(v) of the Act should be amended as follows, "Club subscription paid by an employer on behalf of an employee". This is because it is a business expense incurred for the generation of taxable income.

Committee's Observation

The expenditure is a cost to the employer for the benefit to be enjoyed by the employee. This allowable expenditure is not directly used in the production of income.

60. Deletion of clause 6 in order to be in line with the legislative process and parliamentary procedures.

Committee's Observations

There has been a low uptake of Home Ownership Savings Plan (HOSP) because most people prefer arrangements that allow for occupation of a house while paying for it rather than saving to buy a house. Additionally, the Government has introduced various affordable housing initiatives such as affordable housing scheme relief and mortgage interest deduction to encourage individuals to own a home which is what most individuals would prefer.

On the issue of Parliamentary procedures, Standing Orders give the Speaker the discretion to exempt certain business from the requirement of Standing Order No. 49.

61. They also proposed that clause 7 should be deleted because the introduction is ill timed given the current economic conditions necessitated by COVID-19.

Committee's Observation

This is a consequential amendment of the amendment under clause 4 on the imposition of minimum tax and the digital service tax.

62. They further proposed that clause 8 should be deleted for equity and fairness.

Committee's Observation

There has been a low uptake of Home Ownership Savings Plan (HOSP) because most people prefer arrangements that allow for occupation of a house while paying for it. Additionally, the Government has introduced various affordable housing initiatives such as affordable housing scheme relief and mortgage interest deduction to encourage individuals to own a home which is what most individuals would prefer. As such this exemption serves no purpose.

63. They finally proposed that clause 9 should be amended by reducing corporation tax rate from "37.5%" to "35%". This is to attract investors who would like to set up in the region to consider Kenya as the corporation tax rate will be the most competitive in the region.

Value Added Tax Act

64. Proposed that clause 10 should be deleted because it is punitive to the purchaser/supplier. KRA should enhance linkages between the electronic tax registers and the iTax platform to allow for automatic offsetting of input and output VAT for enhanced compliance and reduced claims. They also proposed that clauses 11 and 12 should be deleted for equity, fairness and to be in line with the legislative process and parliamentary procedures. **(This proposal was adopted by the Committee).**

Tax Procedures Act

65. Proposed amendment of clause 15 by deleting "1st January, 2021" and replacing it with "1st July, 2020". They also proposed that a provision should be introduced in the amnesty for people with pending litigation or matters pending before court given the tax cases at the tribunal. This is for effective administration and to cover people with pending litigation.

Committee's Observation

The proposed effective date is to allow KRA to have time to put up a framework to implement the provision effectively.

Miscellaneous

66. Opposed the amendments proposed to the Public Roads Toll Act in clauses 21 to 26 of the Bill in order to avoid double taxation and negatively impacting the cost of doing business in the country. They also proposed deletion of clause 31 which proposes amendments to section 7 of the Road Levy Fund Act in order to avoid double taxation.

Committee's Observation

The Committee rejected the proposal to delete all the proposed amendments to the Public Roads Toll Act, Cap 407 on the basis that there was need to provide for an effective legal framework for tolling in Kenya. The Committee observed that the payment of tolls would not be mandatory for all road users as the government had already provided for alternative roads concurrent to the toll roads. As such, the use of toll roads would only be for convenience purposes e.g. the Nairobi Expressway which will be used concurrently with Mombasa Road.

67. Amendment of clause 32 by inserting the following words immediately after the word "functions", "*and in collaboration with other centres or institutes executing similar mandates. The functions and objects of the institution shall be to: (i) conduct courses for the exposition and enhancement of the knowledge, skills and experience of the Board and staff of the Authority; (ii) conduct courses on tax administration matters to other persons as may be approved by the Board; (iii) provide directly, or in collaboration with other institutions*

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of higher learning facilities for tax research, studies and training; (iv) participate in the preservation and transmission of tax knowledge in Kenya; (v) contribute to the effective and efficient execution of tax administration in Kenya and beyond; and undertake any other business which is incidental to the performance of any of the foregoing functions". This is for clarity on the objects and functions for the training institution.

Committee's Observation

The amendment seeks to provide a legal framework for the establishment of an institution to offer capacity building and training on tax, customs and revenue administration under the KRA Act. This is meant to anchor the Kenya School of Revenue Administration (KESRA) in the Act.

68. Additionally, they supported the amendment proposed in clause 33 of the Bill because it will enhance service delivery by the Authority and public at large through government expenditure (**this proposal was adopted by the Committee**).
69. Further, they proposed that clause 34 should be deleted for fairness among parastatals in the country since the provision curtails the right for one to sue KRA without at least a one-month notice.

Committee's Observation

The proposed amendment is meant to provide and specify the timelines within which the Authority can be sued. The Court ruled earlier that KRA cannot rely on other legislations to limit the timeframe for being sued.

70. They finally proposed that clause 35 should be amended similar to the amendment that they had proposed in clause 32 for clarity on the objects and functions of the training institutions.

Committee's Observation

The amendment seeks to provide a legal framework for the establishment of an institution to offer capacity building and training on tax, customs and revenue administration under the KRA Act. This is meant to anchor the Kenya School of Revenue Administration (KESRA) in the Act.

3.8 KENYA BANKERS ASSOCIATION (KBA)

In their memorandum dated 21st May, 2020, the Association submitted as follows:-

Income Tax Act

71. Amend the proposed new section 12D by deleting paragraphs (c) and (2) and substituting them with the following new paragraphs, "*(c) that person is not liable for instalment tax under section 12; or (d) that person has three years consecutive tax losses; (2) The tax payable under this section shall be paid by the last day of the fourth month following the end of the year of income*". This will help the National Treasury to resolve concerns on companies facing economic distrains such as those associated with COVID-19.

Committee's Observation

The purpose of introducing minimum tax is to ensure that companies that are on perennial losses contribute towards provision on infrastructure by the Government.

72. Opposed the deletion of sections 15(2)(s), 15(2)(ss) and 15(2)(u) of the Act because legal and incidental costs during a listing process or where a company is looking to raise additional capital at the NSE can be quite significant.

Committee's Observations

Sections 15(2)(s) and 15(2)(ss): The legal costs that are incurred during listing are expenditure since it does not involve production of taxable income rather these costs are incurred for capital raising measures.

Section 15(2)(u): costs incurred during listing are meant to raise capital and should therefore not be allowed as allowable expenditure as it does not involve production of taxable income, rather, the costs are incurred for capital raising measures.

73. They also opposed deletion of section 15(2)(x) of the ITA because several companies whose investments are in the rural and undeveloped areas incur huge capital expenses to set up or improve social infrastructure that benefits local communities. **(The proposal was adopted by the Committee).**
74. Opposed deletion of section 22(c) of the ITA because Home Ownership Savings Plan (HOSP) is a key plank of the government's initiative to provide housing for majority of its citizens.

Committee's Observation

There has been a low uptake of Home Ownership Savings Plan (HOSP) because most people prefer arrangements that allow for occupation of a house while paying for it rather than saving to buy a house. Additionally, the Government has introduced various affordable housing initiatives such as affordable housing scheme relief and mortgage interest deduction to encourage individuals to own a home which is what most individuals would prefer.

75. They proposed that clause 9(11) should be amended by deleting the word "one" appearing immediately before the word "percent" and replacing with the words "zero point five".

Committee's Observation

The proposed rate of minimum tax is lower than the average rate of other countries that have introduced the tax.

76. This is to provide relief especially for businesses that are in tax losses. Finally, they opposed the deletion of section 53 of the Act so as to enable persons over 65 years to have decent livelihoods **(this proposal was adopted by the Committee).**

New proposals

77. Introduce the following proviso to section 15(2)(a), "*bad debts incurred in the production of such gains or profits which the Commissioner considers to have become bad and doubtful debts so incurred to the extent that they are estimated to the satisfaction of the Commissioner may prescribe such guidelines as may be appropriate for the purposes of determining bad debts under this paragraph; provided that for financial institutions licensed under the Banking Act, Cap 488, the deductible bad debts shall be determined based on Central Bank of Kenya prudential guidelines*". The amendment aligns the computation of bad debt provisions for tax purposes to the computations for CBK effectively reducing the administrative challenge of tracking every transaction.

Committee's Observation

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The proposal aims to provide for deductibility of bad debts by banks to be in line with the CBK guidelines. However, the objectives of these guidelines are different from those of income tax legal provisions. The CBK guidelines have higher provisions for bad debts to protect the depositors. If the CBK guidelines are adopted, they will reduce the taxable profits of the financial institutions leading to loss of tax revenue.

78. Introduce the following new paragraph 15(2)(ac), “Cash or the cost of materials and equipment donated to hospitals or other public institutions, including the COVID-19 Emergency Fund towards the efforts to combat the COVID-19 pandemic”. This is because the fight against COVID-19 requires the concerted efforts by both the Government and the private sector to mobilise resources required to sustain the nation during this difficult time.

Committee’s Observation

The law under section 15(2)(aa) already provides for deduction of expenditure incurred on donations for the management of National disasters. This provision can therefore be used to claim deduction for donations made towards the COVID-19 pandemic.

79. Due to the introduction of section 12D which seeks to tax loss-making companies, section 15(4) should be amended by deleting the word “nine” in order to ensure that companies in tax losses as a result of difficult operating environment or start-ups that are struggling to build market share are not exposed to double taxation through capping of losses and through the minimum tax.
80. They proposed that transitional provisions should be included under section 133 through the introduction of the following subsection (7), “Notwithstanding the repeal of the Second Schedule, the capital allowances under the repealed schedule shall continue to apply to assets purchased prior to the 2020 year of income”. This proposal will allow for seamless transition from the old Second Schedule to the current schedule and ensure that persons who invested under the old regime are not disenfranchised.

Committee’s Observation

The capital allowances are based on the year of first use and not the year of purchase. This takes into account the fact that the use of an asset leads to its depreciation and it is therefore necessary to recognize the cost of the use of the asset over an economic period. An asset does not depreciate when it is not in use. To provide for an allowance on the basis of when an asset is purchased as proposed is not in line with the accounting practice and even the tax laws.

81. They proposed the following amendment to paragraph 3(2) of the Eighth Schedule, “(2) The gain accruing to a company on any transfer of machinery classified in paragraph 1(b) of the Second Schedule is not chargeable to tax under section 3(2)(f)”. This is to align the Eighth Schedule to the new Second Schedule and exempts machinery from capital gains tax which would result in double taxation since gains on these assets are taxed as trading receipts at the rate of 30%. **(This proposal was adopted by the Committee)**

Value Added Tax Act

82. They proposed deletion of the amendment proposed to section 17(2)(b) of the Act because it will make it difficult for taxpayers to claim their input VAT entitlement as they will have

no way of confirming that the supplier has declared VAT on the sales (**the proposal was adopted by the Committee**).

83. The following new paragraph 10 should be inserted immediately after paragraph 9 in Part II of the First Schedule, "Insurance agency, insurance brokerage and securities brokerage". This will reduce the cost of insurance and trading of securities which are important in growing insurance and trading in securities.

Committee's Observation

The taxation policy on VAT is to limit exemptions to critical essential goods and services in order to help minimize the tax expenditures.

Tax Procedures Act

84. Introduction of the following proviso to section 12(5A) of the Act, "*(a) persons who are exempt from tax in Kenya; (b) Non-resident persons whose entire income is taxed under the withholding tax regime; and (c) Non-resident persons opening bank accounts for purposes of transacting marketable securities listed on the Nairobi Securities Exchange (NSE)*". This will enhance positioning Kenya as a favourable destination for investors by removing unnecessary hurdles especially in obtaining a PIN.

Committee's Observation

Granting general exemption for specific category of taxpayers may create a loophole for tax evasion. To safeguard this, Section 27 of the Finance Act, 2019 provides powers to the Commissioner to exempt a person or class of persons from the requirement for a PIN.

85. Introduction of the following proviso to section 28(2) of the Act, "*(2) If a taxpayer liable for income tax has submitted a self-assessment return in the prescribed form for a year of income and the taxpayer has a deficit for the year, the taxpayer shall be treated as having made an assessment of the amount of the deficit for the year being the amount set out in the return. Provided that where the taxpayer has a surplus for the year, the taxpayer may carry forward the surplus for set-off against the tax liability in the next tax period*". This is to clarify the treatment of tax overpayments and prevents an emerging scenario where the current refund backlogs under VAT will be replicated under income tax significantly increasing the financial burden on taxpayers.

Committee's Observation

The section proposed to be amended deals with the assessment of taxable income and not with the payment of tax. The issue of overpayment of tax and the treatment of the amount overpaid is provided for under section 47 of the Tax Procedures Act, 2015. The same section provides for set-off of overpaid tax with other tax liabilities.

86. Introduce the following new subsections (3) and (4) to section 32 of the Act, "*(3) The Commissioner may demand payment of tax or evidence of payment of tax at any time prior to the expiry of five years from the date that the taxpayer filled the tax return; (4) Subsection (3) shall not apply in the case of gross or wilful neglect, evasion or fraud by a taxpayer*". This is to align different sections of the TPA and provide certainty to taxpayers that once they legally destroy their documents, KRA cannot demand for production of the same document. This will also provide impetus to KRA to update the taxpayer records expeditiously.

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Committee's Observation

The proposal has been addressed under Section 23 of the Tax Procedures Act which requires a taxpayer to keep records for a period of five years. In addition, the current tax system administered by the Kenya Revenue Authority updates the taxpayers' records automatically once payment has been made.

87. Introduce the following amendment to section 51(11) of the Act, "*The Commissioner shall make the objection decision within sixty days from the date of receipt of the notice of objection failure to which the objection shall be deemed to be allowed. Provided that prior to the expiry of the sixty days, the Commissioner may by writing to the taxpayer extend the period by an additional thirty days where there are ongoing discussions between the taxpayer and the Commissioner to resolve the tax dispute*". This is because taxpayers are entitled to service that is expeditious, efficient, lawful, reasonable and procedurally fair.

Committee's Observation

The amendment was made in the Tax Laws (Amendment) Act, 2020 and should therefore be given adequate time to be fully operationalised before an amendment is made.

Kenya Revenue Authority Act

88. Delete section 15A(3) of the Act because the penalty is very punitive especially given that banks are providing a pro-bono service to KRA. Further, the penalties are extremely punitive for banks and do not consider weekends, public holidays and even system challenges that could prevent the banks from complying with the requirement.

Committee's Observation

The purpose of the section is to facilitate the collection and timely remittance of taxes through the banks and to discourage the retaining of such funds by the commercial banks for their own benefit beyond the allowable statutory period of 2 days from the date of collection at the expense of taxpayers and the Government. In addition, the delays affect taxpayers negatively since the relevant taxes must reflect in the KRA clearance system for goods to be cleared in the case of an importer.

3.9 KPMG ADVISORY SERVICES LIMITED

89. In their memorandum dated 21st May, 2020, they proposed that clause 11(a)(ii) of the Bill should be deleted and paragraph 45 of section A, Part 1 of the First Schedule to the ITA should be deleted and replaced with the following paragraph, "*Specialised equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power*". This is because imposition of upfront VAT will lead to lower product sales and lower overall tax collection for the government in the long run.

Committee's Observation

The amendment will protect local manufacturers because inputs for the manufacture of the items are tax exempt as provided under paragraph 48.

They also proposed the following amendments:-

Income Tax Act

90. Deletion of proposed amendments under sub-clauses (b), (c), and (d) of clause 5 because they will have the effect of increasing the cost of listing or floating shares at NSE hence

discourage listing at the NSE subsequently denying Kenyans the opportunity to invest in big companies.

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Committee's Observation
Clauses 5(b) and 5(c): The legal costs that are incurred during listing are meant to raise capital and therefore the costs should not be allowed as allowable expenditure since it does not involve production of taxable income rather these costs are incurred for capital raising measures.

Clause 5(d): costs incurred during listing are meant to raise capital and should therefore not be allowed as allowable expenditure as it does not involve production of taxable income, rather, the costs are incurred for capital raising measures.

91. They also proposed the deletion of proposed amendment under clause 5(f) since investments in the rural and undeveloped areas set-up or improve social infrastructure that benefits the local communities bolster government's effort and should be encouraged. **(The proposal was adopted by the Committee).**
92. Further, they proposed the deletion of the amendment proposed under clause 6 because it will undermine the Big Four Agenda of affordable housing. Additionally, they proposed that clause 8(b) should be deleted since it will reduce the retirement benefits available to retirees and is also contrary to the general provisions for exemption of the income of registered retirement schemes.

Committee's Observation

There has been a low uptake of Home Ownership Savings Plan (HOSP) because most people prefer arrangements that allow for occupation of a house while paying for it rather than saving to buy a house. Additionally, the Government has introduced various affordable housing initiatives such as affordable housing scheme relief and mortgage interest deduction to encourage individuals to own a home which is what most individuals would prefer.

93. They proposed deletion of clause 8(c) because it will lower pensions and reduce disposable income for retirees, many of whom fall within the category of vulnerable members of society **(this proposal was adopted by the Committee).**
94. They also proposed deletion of the proposed insertion of new section 12E and paragraph 12 under clauses 4 and 9 respectively because there are no regulations governing the administration of taxes in the digital marketplace and the proposal may result to double taxation. Additionally, the current definition of "electronic services" in the Act is ambiguous. The proposal will create additional tax costs and disharmony hence affecting the competitiveness of the Kenyan economy.

Committee's Observation

The framework provides that the resident companies and the non-resident companies with permanent establishments will offset the digital service tax against other taxes. Therefore, there will be no double taxation.

95. Additionally, they proposed the deletion of the proposed insertion of new section 12D and paragraph 11 under clauses 4 and 9 respectively. In light of the COVID-19 pandemic, the proposals may be ill timed since they will further strain cash flows for the already struggling businesses. Alternatively, were the proposed amendments to be retained,

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section 12D(1)(c) should be amended by replacing the word “higher” with “lower” to correct the contradiction between section 12(1)(a) and 12D(1)(c).

Committee’s Observation

The purpose of introducing minimum tax is to ensure that companies that are on perennial losses contribute towards provision on infrastructure by the Government.

96. Amendment to paragraph 3(2) of the eighth schedule by deleting the reference to paragraph 7 of the second schedule and including a reference to paragraph 1(b) of the second schedule to align the eighth schedule to the repeal of the second schedule by the Tax Laws (Amendment) Act 2020. This will reinstate Capital Gains Tax (CGT) exemption on assets enjoying wear and tear allowance. **(This proposal was adopted by the Committee).**
97. Amendment to section 2 by adding the definition of “control” that was previously under paragraph 32 of the repealed second schedule. This will give clarity in interpretation. They further proposed amendments to introduce a transitional provision for the second schedule introduced by the Tax Laws (Amendment) Act 2020 that will allow taxpayers to continue claiming capital exhausted or amendments to clarify that for assets purchased and put to use under the repealed second schedule, taxpayers can use the written down values as the new cost base for claiming capital allowances under the new second schedule. This will ensure uniformity in interpretation.

Committee’s Observation

The capital allowances are based on the year of first use and not the year of purchase. This takes into account the fact that the use of an asset leads to its depreciation and it is therefore necessary to recognize the cost of the use of the asset over an economic period. An asset does not depreciate when it is not in use.

Value Added Tax Act

98. Deletion of proposed new section 17(2)(b) under clause 10 since it will make it difficult for taxpayers to claim their rightly paid VAT as taxpayers have no way of confirming that the supplier has declared the sales. This proposal shifts the mandate of enforcing compliance to the taxpayer **(the proposal was adopted by the Committee).**
99. They proposed amendments to include the supply of maize (corn) flour, cassava flour, and wheat or meslin flour and maize flour in part A of the second schedule. This will zero-rate these essential foods to ensure their affordability given the locust invasion and the COVID-19 that have hit the agricultural sector. **(This proposal was adopted by the Committee).**
100. They also proposed insertion of the following paragraph 10 immediately after paragraph 9 of the first schedule, “*Insurance agency, insurance brokerage, stock exchange brokerage and tea and coffee brokerage services*”. This will reintroduce the VAT exemption deleted by the Tax Laws (Amendment) Act 2020 which will increase the cost of insurance business.

Committee’s Observation

The taxation policy on VAT is to limit exemptions to critical essential goods and services in order to help minimize the tax expenditures. In addition, the cost of insurance services is dependent on demand and supply and the exemption does not translate to reduced cost to the consumers.

101. Additionally, they proposed an amendment to include supplies imported or locally purchased for use in construction of power generating plant, geothermal, oil or mining prospecting and development and generation of solar to the first schedule. This will in effect give VAT exemption status thereby encouraging investments in the industry.

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Committee's Observation

The taxation policy on VAT is to limit exemptions to critical essential goods and services in order to help minimize the tax expenditures.

Miscellaneous Fees and Levies Act

102. Deletion of clause 18 since it will defeat government's effort to open up the local market for the EPZ enterprises whose export markets have been negatively impacted by the COVID-19 pandemic. The proposal will have the effect of increasing the cost of EPZ products.

Tax Procedures Act

103. Amendment of section 69 as follows, "(1) *The Commissioner shall publish a ruling made under section 67 in at least two daily newspapers with a national circulation except that the identity of the applicant to whom the ruling relates shall not be published; (2) Subject to subsection (3), any person may rely upon a ruling published under subsection (1) as a statement binding on the Commissioner with respect to the application of the relevant tax law to the facts set out in the ruling and for the reporting period covered by the ruling; and (3) When a ruling has been withdrawn in accordance with section 68, the Commissioner shall immediately publish a notice of withdrawal in at least two daily newspapers with a national circulation that shall state that the ruling shall cease to be binding from the date the notice*". This reinstates the benefit for taxpayers to rely on published rulings to structure their business and settle similar disputes with KRA.

Committee's Observation

Article 31 of the Constitution of Kenya provides for the right to privacy of a person. However, this right is not absolute and may be limited by legislation as provided for under Article 24 of the Constitution of Kenya. Section 6 of the Tax Procedures Act provides for confidentiality of documents and information obtained in the course of administering the tax laws but also lists the circumstances under which the Commissioner may disclose such information. Under section 62 and 63 of the Tax Procedures Act, the Commissioner has an option of publishing public rulings.

104. Amendment of section 51(11) to read as follows, "*The Commissioner shall make the objection decision within sixty days from the date of receipt of the notice of objection failure to which the objection shall be deemed to be allowed. Provided that prior to the expiry of the sixty days, the Commissioner may by writing to the taxpayer extend the period by an additional thirty days where there are ongoing discussions between the taxpayer and the Commissioner to resolve the tax dispute*". This will delink the objection decision to the receipt of information that the commissioner may require which currently provides a loophole that can be used to extend the period indefinitely. The proposal will protect the taxpayers from extended tax audits while making provision for genuine instances where there are ongoing discussions between the taxpayer and the KRA.

Committee's Observation

Sixty days provided for under the Tax Procedures Act are adequate to process an objection on tax assessment. Further, the Act was amended in 2019 under Section

51(11) to provide for the Commissioner to request for additional information and the sixty days commence from the date he receives the additional information.

105. Introduce the following proviso to section 12(5A), *“Provided that the following persons shall be exempted: a) persons who are exempt from tax in Kenya; b) Non-resident persons whose entire income is taxed under the withholding tax regime; c) Non-resident persons opening banks accounts for purposes of transacting marketable securities listed on the Nairobi Securities Exchange.”* This will enhance the positioning of Kenya as a favourable destination for investors by removing unnecessary hurdles especially in obtaining a Personal Identification Number.

Committee’s Observation

Granting general exemption for specific category of taxpayers may create a loophole for tax evasion. To safeguard this, Section 27 of the Finance Act, 2019 provided powers to the Commissioner to exempt a person or class of persons from the requirement for a PIN.

106. Include the following new subsections to section 32, *“(3) The Commissioner may demand for payment of tax or evidence of payment of tax at any time prior to the expiry of five years from the date that the taxpayer filed the tax return; and (4) Subsection (3) shall not apply in the case of gross or wilful neglect, evasion or fraud by a taxpayer.”* This aligns the different sections of the Act and provides certainty to taxpayers that once they legally destroy their documents, the KRA cannot demand for production of the same documents. This will also provide impetus to the KRA to update the taxpayer records expeditiously.

Committee’s Observation

The proposal has been addressed under Section 23 of the tax Procedures Act which requires a tax payer to keep records for a period of five years. In addition, the current tax system administered by the Kenya Revenue Authority updates the taxpayer records automatically once payment has been made.

107. Amend section 23(2) to read as follows, *“The unit of currency in books of account, records, paper registers, tax returns or tax invoices shall be in Kenya shillings or United States Dollars.”* This will effectively reduce the administrative requirements for conversion and negative impacts of foreign exchange differences which in most cases are only book differences and do not increase the revenue collected by the KRA.

Committee’s Observation

The proposal to introduce reporting in foreign currencies will open up administrative challenges since most investors would want to report in their own currencies. Further, it is a requirement that taxes are paid in Kenya shillings, hence the need to report in the local currency.

108. Amend section 25 to read as follows, *“(2) An application for the extension of time shall be made not later than 14 days prior to the due date for submission of the tax return; (3) The Commissioner may grant an application under this section within 7 days of the receipt of the application if the Commissioner is satisfied that there is reasonable cause, and shall notify the applicant in writing of the extension of time. Provided that if the Commissioner does not communicate within this time, the request will be deemed to have been granted.”* This ensures that the Commissioner replies to an application for an extension of time

required to submit a tax return within the shortest time possible to cushion the taxpayer from potential late filing penalties.

109. **PDF Compressor (Free Version)** The proposed amendment reads as follows, “*The Commissioner shall repay the overpaid tax within a period of one year from the date of application, failure to which the amount due shall attract an interest of 1% per month or part thereof of such unpaid amount after the period of one year.*” This is to cushion businesses from delays in processing tax refunds. The delays have an immediate impact on the businesses and impacts negatively on the competitiveness of the country regionally.

Committee’s Observation

The two years provided under section 47(5) of the Tax Procedures Act is adequate considering the time required to validate the overpayments.

110. Amend subsections (1)(b) and (1)(c) of section 59 to read as follows, “*(b) furnish information relating to the tax liability of any person in the manner and within reasonable time as specified in the notice but in not less than twenty-one days; or (c) attend, within reasonable time but in not less than twenty-one days, at the time and place specified in the notice, for the purpose of giving evidence in respect of any matter or transaction appearing to be relevant to the tax liability of any person.*” Additionally, there should be included a new subsection 59(5) to read as follows: “*Other than in the case of alleged gross or wilful neglect, evasion, or fraud by, or on behalf of, the taxpayer, for purposes of subsection (1) the records, clarifications or information required by the Commissioner or an authorised officer shall be limited to the duration as provided for under Section 23(1)(c).*” These amendments will ensure that reasonable and fair requests are served upon taxpayers.

Kenya Revenue Authority Act

111. Amendment to delete section 15A(3) because it is very punitive especially given that the banks are providing the service to KRA on a pro bono basis. Additionally, the penalties do not take into account weekends, public holidays and system challenges that could prevent the banks from complying with the KRA requirement.

Committee’s Observation

The purpose of the section is to facilitate the collection and timely remittance of taxes through the banks and to discourage the retaining of such funds by the commercial banks for their own benefit beyond the allowable statutory period of 2 days from the date of collection at the expense of taxpayers and the Government. In addition, the delays affect taxpayers negatively since the relevant taxes must reflect in the KRA clearance system for goods to be cleared in the case of an importer.

3.10 OXYGÈNE

In their memorandum they submitted that:-

On Excise Duty Act

112. Amend the proposed amendment to section 10 of the Act by deleting the word “*shall*” appearing immediately after the word “*Commissioner*” and replacing with the word “*may*” and by deleting the words “*once every year*” appearing immediately after the words “*excise duty*” and replacing with the words “*every two years*”. This is because introduction of excise duty will lead to an increase in the price of the items hence lower the demand (**this proposal was adopted by the Committee**).

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113. They proposed that imported glass bottles should be removed from the list of excisable items because glass is a key component and cost driver in the production of alcoholic beverages. They supported the amendment proposed to paragraph 1, Part 1 of the first Schedule to the Act because the 8% threshold is an acceptable rate for beers, ciders, opaque beers, RTDs and related to qualify for excise duty at the lower rate.

On Proposals Applicable to Agriculture, Ajira Programme and Inflationary Adjustment of Excise Duty

114. Opposed the deletion of section 22C of the ITA because repealing it will eliminate the tax relief that is currently available to individuals who are saving towards owning a home through HOSP.

Committee's Observation

There has been a low uptake of Home Ownership Savings Plan (HOSP) because most people prefer arrangements that allow for occupation of a house while paying for it rather than saving to buy a house. Additionally, the Government has introduced various affordable housing initiatives such as affordable housing scheme relief and mortgage interest deduction to encourage individuals to own a home which is what most individuals would prefer.

115. They also opposed the proposal to tax the income of a registered home ownership savings plan because it will reduce earnings on deposits thereby discouraging savings among individuals to acquire homes.

Committee's Observation

There has been a low uptake of Home Ownership Savings Plan (HOSP) because most people prefer arrangements that allow for occupation of a house while paying for it rather than saving to buy a house. Additionally, the Government has introduced various affordable housing initiatives such as affordable housing scheme relief and mortgage interest deduction to encourage individuals to own a home which is what most individuals would prefer.

116. They further opposed the proposal to tax the income of the National Social Security Fund (NSSF) because it will lead to reduction in the benefits/income available to retirees (**this proposal was adopted by the Committee**).

117. They also opposed the proposal to tax the monthly or lump sum pension granted to a person who is sixty years and above because it will reduce the pension paid to retirees thereby negatively affecting their disposable income. (**The proposal was adopted by the Committee**).

118. Further, they opposed the proposal to tax the income from employment paid in the form of bonuses, overtime and retirement benefits for employees whose taxable employment income before bonus and overtime allowances does not exceed the lowest tax band because it will disadvantage low income earners by reducing their disposable income at a time when they are struggling to cope with the effects of COVID-19.

119. Finally, they opposed the change in VAT status of liquefied petroleum gas from zero rated to standard rated because it will increase the cost of LPG (**this proposal was adopted by the Committee**).

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On Proposals Applicable to Digital Service Tax (DST)

120. They proposed that clauses 4 and 9 of the Bill should either be amended to defer the proposed DST by 3 years to allow the industry to mature in Kenya and for all stakeholders to intricately discuss an equitable and efficient means of collecting tax from the industry players or (i) apply a lower DST of 0.1% to 0.5% (in line with international standards and reflecting the nascent digital economy's ability to pay); (ii) further introduce a threshold limit to provide a headroom for resident e-Commerce players to become subject to DST only when they become profitable (to ensure tax is cash flow impact not net impact as designed); and (iii) specify that the DST is on platform revenue, not value of goods traded on platform (which they do not control, nor can audit). This is because placing an additional burden on resident businesses will slow the growth of jobs and digitisation of the economy. With regards to non-resident companies, provide for an extra-territorial VAT rate because a simplified VAT mechanism can have quite a high return of 14% net on international services provided by the non-resident providers to individual consumers in Kenya.

Committee Observation

The DST rate of 1.5% is fair. Resident companies and non-resident companies with permanent establishments in Kenya will offset the DST against other taxes. The target of the DST is therefore the income that non-resident companies without a physical presence derive from Kenya.

121. They opposed the amendment proposed in clause 16 of the Bill because it will be an additional burden on the said companies and additionally, the payment services are already subject to excise tax and would make critical digital transactions more expensive.

Committee's Observation

The proposed digital service tax targets income derived by persons carrying out business over a digital platform. The proposed amendments are meant to provide for a framework for a simpler and effective mechanism for the collection of DST particularly from those without a physical presence in the country. The appointment of tax agents will ensure that the non-residents who have been deriving income without paying taxes pay taxes on such income.

Additional Proposals

122. They proposed that the expenses in clause 5 should be classified as deductible because companies through their foundations and/or philanthropic programmes continually invest in Kenyan communities mainly by providing social infrastructure and amenities such as schools, medical facilities and water projects. Making them non-deductible expenses will adversely impact on the projects benefiting from the same. (**This proposal was adopted by the Committee**).

3.11 ASSOCIATION OF RETIREMENT BENEFITS SCHEMES (ARBS)

123. In their memorandum dated 21st May, 2020, the Association opposed the amendment proposed in clause 8(c) of the Bill because it works against the Government's initiative to support vulnerable persons of the society during this period of the COVID-19 pandemic. (**This proposal was adopted by the Committee**).

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124. They also proposed that clause 36 should be deleted because it was not taken through public participation by the National Treasury.

Committee's Observation

The Retirement Benefits Act does not provide for sanctions in case of failure or delay in submission of the actuarial valuation reports within the specified period. The proposed amendment is therefore aimed at ensuring compliance by the pension schemes to submit actuarial valuation reports of the scheme funds to the Authority within the specified time.

125. Finally, they proposed that clause 8(b) should be deleted because it will reduce the retirement benefits available to retirees and is also contrary to the general provisions for exemption of the income of registered retirement schemes (**the proposal was adopted by the Committee**).

3.12 AGROCHEMICALS ASSOCIATION OF KENYA (AAK)

126. In their memorandum Ref: AAK/CAN VOL1.2020 dated 21st May, 2020, they proposed that public health pest control products should be zero rated in order to support the affordable healthcare through preventive quality services. They also proposed that agricultural or horticultural sprayers (Tariff No. 8424.49) should be zero-rated to ensure the European Union and local market pest and residue compliance requirements. Additionally, they proposed that maize and vegetable seeds should be zero-rated to ensure accessibility to farmers hence ensuring food security in the country.

Committee's Observation

The VAT policy is to restrict zero-rating to exports only and exemptions to basic essential products.

Income Tax Act

127. They proposed that minimum tax should not be introduced so as to allow operation of many businesses that are striving to break even.

Committee's Observation

The intent of the amendment is to ensure that companies that are on perennial losses contribute towards provision of infrastructure by the Government. All companies including those making losses enjoy facilities such as infrastructure whose cost of construction is serviced by the Government.

128. They proposed that trade association fees should be retained as a deductible business expense so as to allow businesses and employees to remain in good standing with associations some of which are crucial for regulation purposes.

Committee's Observation

the expense is for the personal benefit of an individual and not the company. The allowable expenditure therefore negatively affects the tax base.

129. They opposed the taxation of bonuses paid to low income earners in order to increase the marginal propensity to consume since employees/retirees have an increased disposable income which positively impacts the gross domestic product of the country. Opposed the

taxation of income earned by NSSF because it will reduce funds that are available for distribution to retirees. **(The proposals were adopted by the Committee).**

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131. They also opposed the imposition of taxes on the monthly pension paid to persons aged 65 years and above because it will be unjust for the government to burden senior citizens with additional taxes after they have been subjected to taxation for all income earned during their working life. **(This proposal was adopted by the Committee).**

3.13 AFRICAN SALIHIYA CARGO AND CLEANING (ASCC)

131. In their memorandum dated 20th May, 2020, they opposed the amendment proposed to the Standards Act in clause 30 of the Bill because the amendment will cripple consolidation businesses and destroy the industry. Additionally, the amendment was introduced in the Finance Act, 2019 and should therefore be given adequate time to fully operationalise. **(This proposal was adopted by the Committee).**

3.14 MANTRAC KENYA LIMITED, ACHELIS KENYA LIMITED, CAR AND GENERAL (TRADING) LIMITED, ESS EQUIPMENT KENYA LIMITED, ROCKPLANT KENYA LIMITED, NECST MOTORS KENYA LIMITED, REGAL EQUIPMENT LIMITED AND GANATRA PLANT AND EQUIPMENT LIMITED (JCB)

132. In their memoranda, the Companies opposed the imposition of VAT on plants and machinery used for the manufacture of goods of the following H.S. codes 84.29, 84.27, 8413.40.00, 84.74, 85.02 and 84.26 because the equipment are heavily used in infrastructure development which is the backbone of the government's Vision 2030 and a key precursor to achieve industrialisation and further garner middle income status as a nation.

Committee's Observation

VAT paid on the plant and machinery including those of Chapter 84 and 85 is claimable against output tax and therefore has no impact on the cost of production.

3.15 CEREAL MILLERS ASSOCIATION (CMA)

133. In their memorandum dated 21st May, 2020, they proposed that maize and wheat flour should be zero rated in order to avert the food crisis in the country in the coming months given that the country has suffered a locust invasion and the COVID-19 pandemic which has led to supply chain disruptions for both maize and wheat.

Committee's Observation

The VAT policy is to restrict zero-rating to exports only and exemptions to basic essential products.

3.16 FUND MANAGERS ASSOCIATION (FMA)

134. In their memorandum dated 21st May, 2020, the Association opposed the amendment proposed in clause 8(b) of the Bill because NSSF is a first pillar intended to support government in the provision of social security to workers in the country. A tax on its investment income works against government policy of providing social security. They also opposed the amendment proposed in clause 8(c) of the Bill because it will exacerbate old age poverty as it will take away the little benefits that elderly persons rely on as income for survival. **(The proposals were adopted by the Committee).**

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3.17 IPF KENYA

In their memorandum dated 21st May, 2020, they submitted as follows:-

Income Tax Act

135. They opposed the introduction of the minimum tax and proposed that it should be reconsidered and that KRA should come up with modalities of how it will be administered in a way that will promote equity.

Committee's Observation

The purpose of introducing minimum tax is to ensure that companies that are on perennial losses contribute towards provision on infrastructure by the Government.

136. They opposed the deletion of section 44 of the First Schedule to the Act because it will discourage investment in home ownership and undermine the affordable housing goal as enshrined in 'the Big Four Agenda' projects of the government.

Committee's Observation

There has been a low uptake of Home Ownership Savings Plan (HOSP) because most people prefer arrangements that allow for occupation of a house while paying for it rather than saving to buy a house. Additionally, the Government has introduced various affordable housing initiatives such as affordable housing scheme relief and mortgage interest deduction to encourage individuals to own a home which is what most individuals would prefer.

137. They also opposed the proposal to tax income from employment paid in the form of bonuses, overtime and retirement benefits because it is likely to exacerbate inequalities in the country especially now that majority of low income earners and the old are the ones who are worst hit by COVID-19.

Value Added Tax Act

138. Deletion of chapter 13 of the Second Schedule of the Act is likely to increase the cost of liquefied Petroleum Gas (**the Committee adopted this proposal**).

3.18 GOLDEN GATE CARGO SERVICES COMPANY LIMITED

139. In their memorandum dated 20th May, 2020, they opposed the amendment proposed to section 2 of the Standards Act because it will create room for unestablished firms to purport to be consolidators, import cargo and then abandon them at the ports after receiving payment from traders. (**This proposal was adopted by the Committee**).

3.19 OLSUSWA ENERGY LIMITED

140. In their memorandum Ref:TNA/OEL/21/05/2020, they proposed the deletion of clause 11(a)(ii) which proposes to delete paragraph 45 of the First Schedule to the VAT Act in order to retain the VAT exemption that exists in the VAT Act for wind and solar energy and will also extend the exemption to geothermal energy.

Committee's Observation

The amendment will protect local manufacturers because inputs for the manufacture of the items are tax exempt as provided under paragraph 48.

3.20 SALIHIYA CARGO AND SHIPPING AGENCY

141. In their letter dated 21st May, 2020, they proposed the deletion of clause 30 of the Bill which proposes to amend section 2 of the Standards Act because the new definition will **PDF Compressor Free Version** established firms who are after short term gain to cheat Kenyans of their hard-earned cash. **(The proposal was adopted by the Committee).**

3.21 KENYA ASSOCIATION OF INTERNATIONAL CARGO CONSOLIDATORS (KAICC)

142. In their memorandum dated 21st May, 2020, the Association proposed the deletion of clause 30 of the Bill stating that the amendment is very important and therefore requires adequate stakeholder consultation which is not possible because of the COVID-19 pandemic. **(The proposal was adopted by the Committee).**

3.22 MR. JAMES T. MAKORI

143. In his memorandum Ref:JTM/302 dated 20th May, 2020, Mr. Makori proposed the insertion of the following new clause 28A immediately after clause 28, “28A. *Section 156 of the Insurance Act is amended by (a) deleting subsection (2); (b) deleting subsection (3); (c) deleting subsection (4); (d) deleting subsection (5); (e) deleting the words ‘subsection (5) appearing in subsection (6) and substituting therefor the words ‘subsection (1)’; and (f) renumbering subsection (6) accordingly’.* The proposed amendment will ensure accessibility of insurance products to Kenyans and promote growth of the insurance industry in the country.

Committee’s Observation

The cost of insurance services is dependent on demand and supply and the exemption does not translate to reduced cost the consumers.

3.23 HON. PURITY NGIRICI, MP

144. In her memorandum, Hon. Ngirici opposed the deletion of paragraph 53 of the First Schedule to the Income Tax Act as proposed in clause 8(c) of the Bill because most pensioners at the age of 65 are not able to supplement the pension income to cushion them against the effects of inflation. Additionally, pension payment is from taxed income which was invested to yield gains which together with the principal investment are paid to retirees, in effect, only gains are new income while the rest is principal which had already been taxed. **(This proposal was adopted by the Committee).**

3.24 ANJARWALLA & KHANNA LLP

In their memorandum dated 21st May, 2020, Anjarwalla & Khanna LLP proposed the following amendments to the Bill:-

Income Tax Act

145. Deletion of proposed insertion of new section 12D and paragraph 11 under clauses 4 and 9 respectively since they will have the effect of complicating the tax regime while also punishing most businesses who are still experiencing difficult economic times and may be loss-making. Alternatively, they proposed that the amendments should be retained but a further amendment made to reduce the minimum tax rate for sectors that provide necessities and those with high revenues but low margins and to provide that the tax be applicable to loss-making companies on the third year of making losses, to new companies from their fourth year of operation, as an advance tax that can be offset against the current year and future corporation tax and from the financial year 2022/23 to allow businesses to recover from the COVID-19 pandemic.

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Committee's Observation

The purpose of introducing minimum tax is to ensure that companies that are on perennial losses contribute towards provision on infrastructure by the Government.

146. They proposed that further amendments should be made to the new section 12E and paragraph 12 under clauses 4 and 9 respectively to provide for a threshold of Ksh. 50 million above which the tax will be applicable and below which turnover tax will be applicable, that non-resident entities subjected to the tax are exempt from any other taxes chargeable under the Act, that the tax be applicable to new companies from their fourth year of operation, for deferment of the commencement date of the tax to enable the finalisation of a collaborative policy development process with the private sector, and for a clearer definition for "digital marketplace" which may read as follows "*an online service whose main purpose, or one of the main purposes is to facilitate the sale or hiring by users of particular services, goods or other property; and, the service enables users to sell or hire particular services, goods or other property to other users, or to advertise or otherwise offer particular things for sale or hire to other users*".
147. They also proposed deletion of proposed amendments under clauses 6 and 8(a) since the current provision supports the President's Big Four Agenda by encouraging savings in the housing sector.

Committee's Observation

There has been a low uptake of Home Ownership Savings Plan (HOSP) because most people prefer arrangements that allow for occupation of a house while paying for it rather than saving to buy a house. Additionally, the Government has introduced various affordable housing initiatives such as affordable housing scheme relief and mortgage interest deduction to encourage individuals to own a home which is what most individuals would prefer.

148. Further, they also proposed an amendment to section 2 of the Second Schedule to provide for the definition of "control" that was deleted with the repeal of the Second Schedule by the Tax Laws (Amendment) Act 2020. This is to avoid ambiguity in the interpretation of sections 4A and 16(2)(j).
149. Insert the following new paragraph 10 after paragraph 9 as follows, "*(1) This paragraph shall have effect in relation to sales of machinery where either: a) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them; or b) it appears with respect to the sale or with respect to transactions of which the sale is one, that the sole or main benefit which, apart from this paragraph, might have been expected to accrue to the parties or any of them was the obtaining of a deduction under this Schedule. 2. Where the machinery is sold at a price other than that which it would have fetched if sold in the open market, then, subject to this paragraph, the like consequences shall ensue for the purposes of this Schedule to all persons concerned as would have ensued if the machinery had been sold for the price which it would have fetched if sold in the open market; 3. Where the sale is one to which subparagraph (1) (a) applies and subparagraph (1) (b) does not apply, and is a sale which would give rise to a balancing charge, and the parties to the sale by notice in writing to the Commissioner so elect, then subparagraph (2) shall not have effect but the same consequences shall ensue to the buyer and seller as would have ensued if the price for*

which the machinery was sold had been the written down value; but no election shall be made in any case where either the buyer or the seller is at the time of the sale a non-resident person.” This will be in line with other provisions of the Act which allow for technical provisions to be carried out without triggering further tax consequences.

Value Added Tax Act

150. Deletion of proposed amendment under clause 10 since it will effectively provide for the VAT Auto Assessment programme which has exposed the hardship faced by taxpayers in carrying out reconciliations. The provision will be very burdensome to taxpayers and make it difficult to obtain VAT refunds from KRA as it will increase the instances where input VAT will be disallowed by the commissioner. It is also unclear how purchasers will investigate compliance of their fellow taxpayers given the confidentiality rules around tax. **(This proposal was adopted by the Committee).**
151. Deletion of proposed amendment under clause 11(a)(ii) because Kenya still lacks the required energy capacity especially from renewable and clean energy pointing to the importance of encouraging investment in the sector.

Committee’s Observation

The amendment will protect local manufacturers because inputs for the manufacture of the items are tax exempt as provided under paragraph 48.

152. They also proposed deletion of proposed amendments under clauses 11(a)(v) and 11(a)(vi) as the current provisions were introduced to encourage use of clean energy in cooking hence conserving the environment and reducing the contraction of respiratory diseases.

Committee’s Observation

The amendment will protect local manufacturers because inputs for the manufacture of clean stoves are tax exempt as provided under paragraph 66.

153. Deletion of proposed amendment under clause 11(a)(viii) since the current incentive only came to effect in November 2019 and has not been fully operationalized and its impact assessed. **(The proposal was adopted by the Committee).**
154. Deletion of proposed amendment under clause 12(a) since the current incentive was introduced by the Finance Act, 2019 and has not been fully operationalized and its impact assessed. The proposed amendment will also increase the cost of living as LPG is the main energy source in many urban homes. **(The proposal was adopted by the Committee).**
155. Deletion of proposed amendment under clause 12(b) because it will have the effect of increasing the cost of solar batteries that support off-grid electricity. **(The proposal was adopted by the Committee).**
156. Amendment to exempt from VAT “transfer of business as a going concern”. This is in light of the harsh effects of the COVID-19 which may necessitate the consolidation of businesses for survival. The applicable VAT cost increases transaction costs and could be a barrier for foreign investors who would like to acquire existing businesses in Kenya due to the additional cash flow implications.

PDF Compressor Free Version Capital Markets Act

157. Deletion of proposed amendment under clause 27 since it will create market confusion on the authority of Retirement Benefit Authority's approval for pension investments. The proposed amendment will increase the burden of compliance for private equity firms. Alternatively, were the proposed amendment to be retained, there should be further amendment to provide for a clear definition of "public funds" to avoid confusion.

Committee's Observation

In the year 2015, the Investment Guidelines under the Retirement Benefits Regulations were amended to allow pension schemes to invest up to 10% of their assets in private equity funds and venture capital funds licensed by the CMA. However, the Capital Markets Act was not amended to provide for the same.

3.25 PRICEWATERHOUSECOOPERS LIMITED (PWC)

In their memorandum dated 21st May, 2020, PWC proposed the following amendments to the Bill:-

Income Tax Act

158. They proposed further amendment to the proposed section 12D(1)(c) under clause 4 by replacing the word "higher" with "lower" to correct the drafting error since the minimum tax should only be applicable for persons whose instalment tax is lower than 1% of turnover. Insertion of the following new subsection 1(d) immediately after 1(c) under section 12D of clause 4, "*(d) the person has been in business for more than 1 year*". This will cushion new businesses which would be unprofitable in the initial years of business but have a progressively significant turnover particularly capital-intensive business.
159. Insert the following new section 39C, "*An amount of tax which has been paid under section 12 D by a person chargeable to tax who is in a deficit for a particular year of income shall be set off against the tax charged on that person for subsequent years of income.*" This will ensure that the minimum tax is payable in so long as the company remains in a loss-making position but allows for such taxes to be recovered once they are in a profitable situation. This will protect genuine loss-making companies.
160. Insert the following new section 12D(3) immediately after section 12D(2) of clause 4, "*(3) for the purposes of Section 12D "gross turnover" does not include taxes imposed under any tax law in Kenya.*" This will prevent the imposition of a tax on tax. Further amendment to proposed section 12D (2) under clause 4 by including the following new proviso, "*Provided that a resident person or non-resident person with a permanent establishment in Kenya shall offset the minimum tax paid against the tax payable for that year of income.*" This will provide clarity with regards to the interplay between instalment taxes payable in respect of minimum tax and those payable in respect of the profit/income tax.
161. Insert the following new proviso to the proposed section 12E under clause 4, "*Provided that for purposes of this Paragraph the tax shall be charged on the fee for services rendered in respect of the provision of a digital marketplace*". This will provide clarity on how to determine the base upon which to charge the digital service tax. Delete the proposed insertion of new subsection 12E(2) under clause 4 since it is targeted to aggregators that handle cash transactions relating to such digital market places who may find it difficult to determine the component of the transaction that represents the service fee in contrast to the product cost. This may result in the taxation of transactions that are not subject to the digital services tax.

162. Delete the proposed amendments under clauses 5, 6, and 8 because they were rejected by the National Assembly in the consideration of the Tax Laws (Amendment) Bill 2020 and therefore these proposed amendments may run foul of the Parliamentary Standing Order that prohibits the introduction of issues that have been debated in the previous six months.

Committee's Observation

The National Assembly Standing Orders give the Speaker the discretion to exempt certain business from the requirement of Standing Order No. 49.

163. Amend section 6(A)(1) by deleting the words “*one hundred and forty-four*” and substituting therefor the words “*two hundred and eighty-eight*” to provide for a more simplified tax regime. This will also be in alignment with the recently expanded tax rates and will provide Kenyan residents additional disposable income to cushion them from the economic shocks caused by the COVID-19 pandemic (**this proposal was adopted by the Committee**).

Tax Procedures Act

164. Delete section 23(2) and substitute with the following new subsection, “*The unit of currency in books of account, records, paper registers or tax returns shall be in Kenya shillings provided that a taxpayer may apply to the Commissioner to allow for foreign currency reporting where the taxpayer's functional currency is a commonly traded foreign currency*”. This will reduce unrealized forex gains and losses arising solely from translation while also removing the reference to tax invoices given that taxpayers are at liberty to contract in foreign currencies.

Committee's Observation

The proposal to introduce reporting in foreign currencies will open up administrative challenges since most investors would want to report in their own currencies. Further, it is a requirement that taxes are paid in Kenya shillings, hence the need to report in the local currency.

Value Added Tax Act

165. Delete the amendments proposed under clause 10 since taxpayers who do not have access to their suppliers' data, will be tasked with the role of VAT compliance enforcement which is the mandate of the KRA (**the proposal was adopted by the Committee**).

Value Added Tax Regulations 2017

166. Amend regulation 2 to provide for definitions of “*Business agreements*”; “*Location of the user or consumer*”; and “*User or consumer*” to provide certainty to taxpayers and reduce disputes with the KRA. Amend regulation 13(2)(c) by deleting the paragraph “*for services, such other documents as the Commissioner may require as proof that the services had been used or consumed outside Kenya*” and substituting therefor the following new paragraph, “*for services, such other documentary proof that the services have been used or consumed outside Kenya.*” This will provide certainty to taxpayers and reduce disputes with the KRA. Amend regulation 13 by inserting the following new regulation immediately after Regulation 13(2)(d), “*Determination of the place of use, consumption or enjoyment of services; 13A. Except as is otherwise provided in the Regulations, the place of use, consumption or enjoyment of a service supplied from Kenya shall be the location of the user or consumer of the services.*” This will provide certainty to taxpayers and reduce disputes with the KRA.

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167. Introduction of the Group VAT registration guidelines which should prescribe the approved form of registration, which companies qualify for group registration, obligations of the Commissioner, VAT treatment of a registered group in terms of: intra-group supplies and deduction of input tax, issuance of tax invoices and debit/credit notes, filing of group VAT returns and tax payment. This will be in line with section 34(9) of the VAT Act while bringing clarity to the VAT law and also easing the administration burden within the group companies. Amend the approach in the apportionment of the refund amount to have taxpayers making zero rated supplies get a full refund on their input tax claims. Finally, amend regulation 9 by introducing a provision indicating that where a tax invoice is issued in a foreign currency, a KES equivalent of the taxable value of the supply should be indicated on the face of the invoice. This will cover the sectors whose functional currency is a foreign currency.

3.26 THE INDEPENDENT POWER PRODUCERS (IPPs)

In a memorandum dated 21st May, 2020, IPPs proposed the following amendments to the Bill: -

Income Tax Act

168. Further amendments to the proposed section 12D under clause 4 to exempt the power sector from the minimum tax owing to the fact that power projects are capital intensive and power producers tend to be in a tax loss position in their initial years of operation. This minimum tax will be punitive and undermine the tax incentives granted under the Act. The minimum tax may hinder the promotion of manufacturing under the Big Four agenda which requires cheap and reliable electricity.
169. Introduce the following new section 134 (1), *“Notwithstanding the repeal of paragraph 56 of the First Schedule to the Income Tax Act by the Tax Laws Amendment Act, 2020, the exemption shall continue for power producers with Power Purchase Agreements which were signed on or before 25th April 2020.”* This will cushion the Kenyan economy from increases in electricity tariffs to be occasioned by the withdrawal of the compensating tax exemption. Introduce the following new section 134 (2) immediately after proposed subsection (1), *“Notwithstanding the repeal of the Second Schedule to the Income Tax Act by the Tax Laws Amendment Act, 2020, capital allowances under the repealed Second Schedule shall continue for power producers with Power Purchase Agreements that were signed on or before 25 April 2020.”* This will cushion the Kenyan economy from increases in electricity tariffs occasioned by the reduction of accelerated capital allowances.
170. Delete the proviso under paragraph 3 (d) of the Third Schedule and replace with the following new paragraph, *“Provided that: i) the rate applicable to citizens of the East African Community Partner States in respect of dividend shall be five percent of the gross sum payable; ii) the rate applicable to power producers with a power purchase agreement signed on or before 25 April 2020 shall be ten percent of the gross sum payable.”* This will promote private investments in the power sector which is mainly driven by non-residents by safeguarding investments that have already signed Power Purchase Agreement with KPLC.

Value Added Tax Act

171. Deletion of proposed amendment under clause 11(a)(ii) since it discourages investment in green energy. Additionally, the proposal was rejected in the consideration of the Tax Laws (Amendment) Bill 2020 and should not be reintroduced to the house before the lapse of six months as dictated by Parliamentary procedure.

Committee's Observation

The amendment will protect local manufacturers because inputs for the manufacture of Compressor Free Version provided under paragraph 48.

172. Introduce the following new section 69, "*Notwithstanding the repeal of paragraph 29 of the First Schedule to the Value Added Tax Act, the exemption shall continue for a period of five years for power producers with Power Purchase Agreements which were signed on or before 25th April 2020.*" This is to provide clarity to power producers who had already been granted VAT exemptions on the construction of their power plants but had not completed construction.

Miscellaneous Levies and Fees Act

173. Deletion of proposed amendments under sub-clauses (a)(ii) and (a)(iii) of clause 19 owing to the fact that power projects are costly to implement. The removal of the current exemptions will lead to an increase in electricity tariff.

3.27 KENYA ASSOCIATION OF MANUFACTURERS (KAM)

In their memorandum dated 26th May, 2020, KAM proposed the following amendments to the Bill: -

Income Tax Act

174. Deletion of proposed insertion of new section 12D and paragraph 11 under clauses 4 and 9 respectively to allow for an impact assessment analysis before implementation. The proposed tax will negatively affect sustained business operations and significantly hamper already strained cash flows, ultimately leading to closures.

Committee's Observation

The purpose of introducing minimum tax is to ensure that companies that are on perennial losses contribute towards provision on infrastructure by the Government.

175. Delete clause 5(a) since it negates the principle enshrined in tax laws that all expenses incurred in the production of income is allowable as an expense for businesses. The proposal may also cause the resignation of companies from trade bodies leaving the government with no body they can collectively engage.

Committee's Observation

The expense is for the personal benefit of an individual and not the company. The allowable expenditure negatively affects the tax base.

176. Delete clause 10(2)(b) because a taxpayer has no legal standing to compel another tax payer to pay a tax; the proposed function is within the function of KRA which has the authority and adequate instruments to collect taxes (**the Committee adopted the proposal**).
177. Amend by replacing the words "*to the national grid*" in the definition of "*manufacture*" under Paragraph 24(3)(e) of the second schedule with "*transformation and distribution*". This will incentivize the generation of electricity regardless of its contribution to the national grid and encourage innovativeness in easing the high demand on the national grid especially using renewable energy sources which has been government's focus. Insert the words "*and used*" immediately after "*new*" under paragraph 24(1)(b) of the second schedule

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part V because manufacturers and most businesses purchase used buildings for setting up production facilities due to high cost of investment into new buildings. The proposal as it is only benefits the first buyer and locks out other subsequent buyers despite that being a new investment for such a company.

Committee's Observation

The main reason for pegging the investment deduction allowance to supply to the National Grid was to ensure effective control and compliance management on companies that generate electricity. Opening this may lead to poor control and management of this activity and result in loss of revenue.

178. Introduce the following new paragraph 10 under the second schedule part I, "*The Effective date of the deductions in respect of investment allowance shall commence on 1st January 2021*". This will cushion ongoing capital projects from the sudden change of policy. Introduce the following new paragraph (c) under section 1 of the Tax Laws Amendment Act, 2020, "*(c) In the case of the amendment to Second Schedule of the Income Tax Act, on the 1st day of January 2021.*" This will cushion ongoing capital projects from the sudden change of policy.

Value Added Tax

179. Deletion of clause 11(a)(iii) as it will have the effect of increasing the cost of agricultural products and hinder the achievement of food security. The imposition of VAT as well as the dip of the Kenya shilling against hard currencies will adversely affect small scale farmers who may go back to traditional methods of ploughing and carting. This may undo the strides made in enhancing productivity and reducing harvesting losses.

Committee's Observation

The exemption was meant to benefit tractors for use in the agricultural sector. It is however difficult to separate those used for commercial purposes from those used for agricultural purposes hence provides a loophole for revenue loss.

180. Deletion of clause 11(a)(v) since it will halt further expansion growth in the sector which has had a direct impact on the society through employment. They proposed deletion of clause 11(a)(vi) since most businesses in the stove industry operate with minimal margins and will pass the entire tax amount to consumers who are typically low-income groups with high price sensitivity. The proposal will eventually lead to closures due to a drop in demand thus undermining the Big Four agenda on promoting local manufacturing. It will also have adverse effects on the overall health of the society and the environment as societies revert back to charcoal and kerosene for energy.

Committee's Observation

Incentives for local manufacture of these items have been provided under paragraph 66. This will encourage local manufacturing of the items.

181. Delete clause 11(a)(viii) because it will discourage investments in plastic recycling plants and undermine Vision 2030 and the government's policies aimed at minimizing plastic waste **(the proposal was adopted by the Committee).**
182. Delete clause 12(a) because it will result to an increase in the cost of LPG whose use the government is encouraging **(the proposal was adopted by the Committee).**

183. Introduce the following new item 27 to the first schedule, "*Item 27 - Plants and machinery of Chapter 84 and 85*". This will encourage investments and also subsidize costs for manufacturers. Replace the word "two" with "one" immediately before the word percent under section 25A effective from 1st April 2020 lowering withholding VAT. This will aid in the reduction of build-up credit, improve the cash-flow and liquidity for the taxpayers' businesses, while still maintaining the tax base.

Committee's Observation

VAT paid on plants and machinery including those of Chapter 84 and 85 is claimable against output tax and therefore has no impact on the cost of production.

184. Introduce medicaments and vaccines as an item under paragraph 39(3) of the second schedule in order to promote local manufacturing while supporting current efforts to mitigate COVID-19 health effects. Delete paragraph 51 from the First Schedule and introduce it under the Second Schedule to create a fair environment for local manufacturers and to enhance their competitiveness. Delete "8309.90.90 aluminium pilfer proof caps with EPE liner" under the first schedule to enhance the competitiveness of local metal sector manufacturers. Introduce "*Denatured Ethyl Alcohol used for purposes of cooking fuel*" under the second schedule to lower its cost and encourage clean cooking solutions. Introduce a new paragraph on "*Airlid paper with super absorbent polymer 16.5gsm/47 of tariff number 4803.00.00*" under the first schedule. This will incentivize the manufacture of tissue papers and sanitary towels among others.

Committee's Observation

The taxation policy on VAT is to limit exemptions to critical essential goods and services in order to help minimize the tax expenditures.

Excise Duty Act

185. Amend section 10 by deleting the word "*shall*" immediately after the word Commissioner and replace with the word "*may*" and deleting the words "*once every year*" appearing immediately after the words "*specific rate of excise duty*". This will create a more predictable excise review and ensure relative constancy of commodity prices.

Committee's Observation

This is already provided for in the law.

186. Introduce the following new paragraph in the First Schedule, "*Imported sanitary towels – at a rate of 10% excise duty*". This will incentivize local manufacture of sanitary towels.

Committee's Observation

Sanitary towels are essential products. Imposing excise duty will make them expensive and inaccessible.

Tax Procedures Act

187. Insert the words "*Miscellaneous Fees and Levies Act*" immediately before the words "*and Excise Duty Act*" in the definition of "*Tax Law*" under section 3. This is to recognize the Miscellaneous Fees and Levies Act 2015 as a tax regime under the Act to facilitate effective implementation.

188. Insert the following new subsection (3) immediately after subsection (2) under Section 75, “(3) *A taxpayer shall not be penalized for failure to do, or for a delay in doing any act or thing that is required to be done under this section where such failure or delay is caused by a breakdown or any other technical difficulty in the electronic tax system*”. This will allow a tax payer to declare a genuine error especially where there is no loss of revenue for the Government. Insert the following new subsection (3) immediately after subsection (2) under Section 86, “(3) *Penalty under subsection (2) shall not be applicable where failure to submit a tax return in electronic form or to pay a tax electronically is caused by a breakdown or any other technical difficulty in the electronic tax system*”. This will allow a tax payer to declare a genuine error especially where there is no loss of revenue for the Government.

Committee’s Observation

The law under section 89(7) provides for waiver of interest and penalties in circumstances anticipated by the stakeholder. The proposed amendment to section 75 is therefore not necessary.

Miscellaneous Fees and Levies Act

189. Delete clause 17 because it will be in breach of East African community business rational by undermining free trade.

Committee’s Observation

The amendment is meant to harmonise the IDF rate at 1.5% for manufacturers considering that the manufacturers under the EAC Duty Remission Scheme enjoy remission of import duty on their inputs/raw materials.

190. Introduce the following new section 9A immediately after section 9, “9A (1) *A taxpayer who has overpaid a tax under this Act may apply to the Commissioner, in the approved form provided for under Section 47 of the Tax Procedures Act, for a refund of the overpaid tax within one year of the date on which the tax was paid; (2) The provisions of Section 47 of the Tax Procedures Act, 2016 shall apply for the purposes of the payment of refunds of excess tax for import declaration fee and the railway development levy; and (3) A registered person under Section 9 A (1) shall lodge the claim for the refund of the excess tax within twelve months prior to the commencement of Section 9 A (1)*”. This recognizes the Tax Procedures Act to ensure that all tax laws are recognized under the Act to facilitate effective implementation.
191. Delete the word “and” and insert the words “*items of Chapter 84 and 85 and industrial spares for use by manufacturers*” immediately after the words “*intermediate products*” in subsection (2A)(a) under section 7. This will further enhance the competitiveness of local manufacturers. Delete the word “and” and insert the words “*items of Chapter 84 and 85 and industrial spares for use by manufacturers*” immediately after the words “*intermediate products*” in subsection (2A)(a) under section 8. This will further enhance the competitiveness of local manufacturers.

Committee’s Observation

VAT paid on plants and machinery including those of Chapter 84 and 85 is claimable against output tax and therefore has no impact on the cost of production.

Public Roads Toll Act

192. Deletion of proposed amendments under clauses 21, 22, 23, 24, 25 and 26 since it will result to double taxation alongside the “fuel levy”. The privatization of taxation or tolls is against the intention of the Act to have tolls as a public reserve. The proposals should be subjected to national consultation.

Committee’s Observation

The Committee rejected the proposal to delete all the proposed amendments to the Public Roads Toll Act, Cap 407 on the basis that there was need to provide for an effective legal framework for tolling in Kenya. The committee observed that the payment of tolls would not be mandatory for all road users as the government had already provided for alternative roads concurrent to the toll roads. As such, the use of toll roads would only be for convenience purposes e.g. the Nairobi Expressway which will be used concurrently with Mombasa Road. Further, that the government had put in place various mechanisms like the use of an electronic system of collecting toll so as to reduce corruption and ensure there is transparency in the management of tolls. Additionally, monies collected as toll would be a source of revenue for the development of roads.

Kenya Revenue Authority Act

193. Deletion of clause 34 because it goes against the constitutional provisions to access justice by introducing longer procedures for accessing justice.

Public Finance Management Act

194. Introduce the following new section establishing a “Refund Fund”, “(1) There is established a fund to be known as the Tax Refund Fund which shall be administered by the Cabinet Secretary of matters relating to Finance; (2) There shall be paid into the Fund a minimum of 5% of the Gross amount of monthly tax collected as approved by the National Treasury to confirm the percentage):- (a) Collected from any tax law including, the Tax Procedures Act, Income Tax Act, Excise Duty Act, Value Added Tax, and Miscellaneous Fees and Levies Act; and (b) for purposes of payment of refunds arising from excess and/or erroneous payment of tax under any tax law including, the Tax Procedures Act, Income Tax Act, Excise Duty Act, Value Added Tax, and Miscellaneous Fees and Levies Act; (3) Payment from the Fund shall be made without undue delay to cover all amounts owed by Government payable as refunds; (4) Not later than three months after the end of each financial year, the National Treasury shall prepare and submit to the Auditor-General financial statements for that year in respect of the Tax Refund Fund; (5) The Cabinet Secretary may by notice in the Gazette provide for the mode of administration of the Fund established under sub-section (1)”. Alternatively, there may be a dedicated Tax Refund Bill 2019 to provide for refunds under powers given to the Cabinet Secretary of the National Treasury under section 24 (3) of the PFM Act. This will ensure prompt payment of refunds.

Committee’s Observation

The proposal is good but the timing is not right owing to the difficult economic times that the country is facing owing to the prevailing economic downtime occasioned by the COVID-19 pandemic.

3.28 KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

In their memorandum dated 21st May, 2020, KEPSA proposed the following amendments to the Bill:-

Income Tax Act

195. Amend section 3(ba) to provide for a clear definition of “digital marketplace”, “*digital marketplace*” means “*an online service, other than a digital financial marketplace, whose main purpose, or one of the main purposes is to facilitate the sale or hiring by users of particular services, goods or other property; and, the service enables users to sell or hire particular services, goods or other property to other users, or to advertise or otherwise offer particular things for sale or hire to other users*”. Amend section 3(bb) to read as follows, “*digital financial marketplace means “an online service which facilitates lending, the trading of financial instruments, commodities or foreign exchange”*”.
196. Further amendment to the proposed section 12E under clause 4 to include the following proviso, “*Notwithstanding any other provisions of this Act, a tax to be known as digital service tax shall be payable by a person whose income from the provision of services is derived from or accrues in Kenya through a digital marketplace and exceeds Kenya Shillings 50 million in a year of income*”. This will protect lower-income businesses which will only be subjected to turnover tax. Further amendment to the proposed section 12E(2) under clause 4 to read as follows, “*The tax payable under subsection (1) shall be due on an instalment tax basis payable on or before the 20th day of the fourth month, the sixth month, ninth month and the twelfth month following the year-end of the company*”. This will provide clarity as to when the DST is to be remitted.
197. Further amendment to clause 1 to defer the commencement date for the proposed section 12E and paragraph 12 under clauses 4 and 9 respectively to 1st July 2021 in order to provide ample time for respective businesses to make necessary system and compliance adjustments. Further amendments to the proposed section 12E under clause 4 to read as follows, “*1) Notwithstanding any other provision of this Act, a tax to be known as digital service tax shall be payable by a person whose income from services is derived from or accrues in Kenya through a digital market place: Provided that: (i) a resident person or a non-resident person with a permanent establishment in Kenya shall offset the digital service tax paid against the tax payable for that year of income; and (ii) a non-resident person without a permanent establishment in Kenya subject to digital services tax shall not be subject to any other tax under this Act.*”
198. Deletion of proposed amendments under clause 3, 4, and 9 relating to minimum tax because it works to undermine the tax incentives advanced to businesses. The proposal goes outside the ambit of section 3 of the Act to levy tax only on gains and profit. The lack of definition for “gross turnover” will also create confusion.

Committee’s Observation

The purpose of introducing minimum tax is to ensure that companies that are on perennial losses contribute towards provision on infrastructure by the Government.

199. Deletion of proposed amendments under clauses 5(a), 5(e), 6 and 8(c) because they were rejected in the consideration of the Tax Laws (Amendment) Bill 2020 and their consideration undermines legislative procedures.

200. Deletion of proposed amendments under sub-clause (b), (c), and (d) of clause 5 since it will see an increase in the cost to companies looking to list or float shares at the NSE. This will discourage listing at the NSE consequently denying Kenyans the opportunity to invest in the Capital Market in Kenya through the securities market.

Public Commentaries

Committee's Observation

Legal costs and other incurred during listing are meant to raise capital and therefore the costs should not be allowed as allowable expenditure since it does not involve production of taxable income rather, these costs are incurred for capital raising measures.

201. Deletion of proposed amendment under clause 5(f) owing to the need to encourage investment in social infrastructure that bolsters government efforts in the provision of services **(the proposal was adopted by the Committee)**.
202. Deletion of proposed amendment under clause 8(b) as it will reduce the retirement benefits available to retirees and is also contrary to the general provisions for exemption of the income of registered retirement schemes **(the proposal was adopted by the Committee)**.
203. Amend section 15(2)(aa) to read as follows, "*Expenditure incurred in that year of income on donations to the Kenya Red Cross, county governments, government ministries, a body that is registered or exempt from registration under the Non-Government Organisations Co-ordination Act, 1990 or any other body or institution appointed by the President to be responsible for collection of funds or the management of national disasters or expenditure incurred by a resident taxpayer on a project or a direct expenditure towards the alleviation of national disaster declared by the President.*" This will enable all Kenyans to join hands and assist towards the alleviation of COVID-19.
204. Insert the following new paragraph 10 to the Second Schedule, "*Where at the date of commencement of this Schedule, a person had commenced a project and where this project is commissioned within two years after the commencement of this schedule, the capital allowances provided under Paragraphs 24 (1)(c), (d), (dd), (e) and (f), 24C and 24D of the repealed Schedule shall apply as if they were applicable at the commencement of this Schedule*". This will provide certainty on tax changes.
205. Delete the words "*twenty percent*" appearing in paragraph 3(a) of Head B of the third schedule and replace them with "*ten percent*" to align withholding tax rates to the reduced withholding tax rates in the new Double Tax Agreements the Government is entering into. It will also encourage compliance consequently raising more revenue for government. Amendment to consider co-operative societies as approved institutions under section 22C(8) to enable them benefit from tax deductible allowance on mortgage interest. Insert the following proviso to section 15(2)(a), "*Bad debts incurred in the production of such gains or profits which the Commissioner considers to have become bad, and doubtful debts so incurred to the extent that they are estimated to the satisfaction of the Commissioner to have become bad, during such year of income and the Commissioner may prescribe such guidelines as may be appropriate for the purposes of determining bad debts under this subparagraph; Provided that for financial institutions licensed under the Banking Act, Cap 488, the deductible bad debts for unsecured debts shall be determined based on Central Bank of Kenya prudential guidelines*". This aligns the computation of bad debt provisions for tax purposes to the computations for Central Bank of Kenya effectively reducing the administrative challenge of tracking every transaction. Amendment to section 15(4) to

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provide that tax losses should be carried forward indefinitely until they are fully utilized. This will ensure continued attraction of foreign investment despite the minimum tax regime.

Value Added Tax Act

206. Deletion of clause 10(2)(b) because it seeks to shift the mandate of enforcing compliance to the taxpayer who has no way of confirming that the supplier has declared the sales (**the Committee adopted the proposal**).

207. Further amendment to clause 11(a)(ii) to read as follows, "*Paragraph 45 of the first schedule of VAT Act 2013 be amended by inserting the following new paragraph; "Specialized equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power"*". This will attract more investment in renewable energy.

Committee's Observation

The amendment will protect local manufacturers because inputs for the manufacture of the items are tax exempt as provided under paragraph 48.

208. Deletion of clause 11(a)(iii) as it will increase production costs.

Committee's Observation

The exemption was meant to benefit tractors for use in the agricultural sector. It is however difficult to separate those used for commercial purposes from those used for agricultural purposes hence provides a loophole for revenue loss.

209. Deletion of clause 11(a)(v) and 11(a)(vi) to enable continued adoption of clean cooking solutions and to support manufacturing in the sector.

Committee's Observation

Incentives for local manufacture of these items have been provided under paragraph 66. This will encourage local manufacturing of the items.

210. Deletion of clause 12(a) owing to the need to further encourage adoption of clean cooking fuel to spur improvement in health, environment, social-cultural and economic aspect of the country. The proposal also goes against government policy objective of making LPG the primary household fuel (**the proposal was adopted by the Committee**).

211. Deletion of clause 12(b) which will result to increased cost of batteries for the essential solar (**the proposal was adopted by the Committee**). Delete the word "*marine*" appearing in section 97 and replace thereof with "*all*" to encourage investment in the fisheries and aquaculture sector by promoting the use of modern technologies to effectively increase fish production. This supports the Big Four agenda on food security.

212. Amendment to include the supply of maize (corn) flour, cassava flour, and wheat or meslin flour and maize flour in part A of the second schedule to ensure the affordability of these essential foods (**this proposal was adopted by the Committee**).

213. Introduce the following new paragraph 10 immediately after paragraph 9 of the First Schedule part II, "*Insurance agency, insurance brokerage, securities brokerage and tea and coffee brokerage services*". This is to ensure the growth of insurance and trading in securities.

Committee's Observation

The taxation policy on VAT is to limit exemptions to critical essential goods and services in order to help minimize the tax expenditures.

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214. Reintroduce supplies imported or locally purchased for use in construction of power generating plant, geothermal, oil or mining prospection and development and generation of solar to the first schedule to prevent reduction in investment in the sector. Amendment to zero-rate technical denatured ethanol and sustainable fuel briquettes to advance environmental conservation. Amendment to exempt plastic bag biogas digesters; biogas; and leasing of biogas producing equipment to encourage the use of clean cooking solutions.

Tax Procedures Act

215. Further amendment to delete "15" from clause 1(a) to allow taxpayers to take advantage of the programme immediately.
216. Further amendments to clause 15 to change the period for income tax to financial years beginning 1st January 2016 and ending on or before 30th June 2020 and to allow a tax payer pay the full penalty and 25% of the interest due in the case of voluntary disclosure outside this period.

Committee's Observation

The proposed effective date of the provision is to allow KRA to have time to put up a framework to implement the provision effectively.

217. Amend section 28(2) by inserting the following proviso, "*Provided that where the taxpayer has a surplus for the year, the taxpayer may carry forward the surplus for set-off against the tax liability in the next tax period*". This will lessen the financial burden on tax payers as a result of refund backlogs.
218. Amend section 51(11) to read as follows, "*The Commissioner shall make the objection decision within sixty days from the date of receipt of the notice of objection failure to which the objection shall be deemed to be allowed. Provided that prior to the expiry of the sixty days, the Commissioner may by writing to the taxpayer extend the period by an additional thirty days where there are ongoing discussions between the taxpayer and the Commissioner to resolve the tax dispute*". This will ensure expeditious, efficient, lawful, reasonable and procedurally fair service to taxpayers. Amend section 12(5A) by including the following proviso, "*Provided that the following persons shall be exempted: a) persons who are exempt from tax in Kenya; b) Non-resident persons whose entire income is taxed under the withholding tax regime; and c) Non-resident persons opening banks accounts for purposes of transacting marketable securities listed on the Nairobi Securities Exchange*". This removes unnecessary hurdles thus improving the ease of doing business in Kenya.

Committee's Observation

Sixty days provided for under the Tax Procedures Act are adequate to process an objection on tax assessment. Further, the Act was amendment in 2019 under Section 51(11) to provide for the Commissioner to request for additional information and the sixty days commences from the date he receives the additional information.

219. Amend section 32 to include new subsections 3 and 4 to read as follows, "(3) *The Commissioner may demand for payment of tax or evidence of payment of tax at any time*

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prior to the expiry of five years from the date that the taxpayer filed the tax return; and (4) Subsection (3) shall not apply in the case of gross or wilful neglect, evasion or fraud by a taxpayer". This is to align the different sections of the Act while providing certainty to taxpayers.

Committee's Observation

The proposal has been addressed under Section 23 of the Tax Procedures Act which requires a taxpayer to keep records for a period of five years. In addition, the current tax system administered by the Kenya Revenue Authority updates the taxpayers' records automatically once payment has been made.

220. Amend section 23(2) to read as follows, "*The unit of currency in books of account, records, paper registers, tax returns or tax invoices shall be in Kenya shillings or United States Dollars*". This effectively reduces the administrative requirements for conversion and negative impacts of foreign exchange differences which in most cases are only book differences.

Committee's Observation

The proposal to introduce reporting in foreign currencies will open up administrative challenges since most investors will want to report in their own currencies. Further, it is a requirement that taxes are paid in Kenya shillings, hence the need to report in the local currency.

221. Amend section 25 to read as follows, "*(2) An application for the extension of time shall be made no later than 14 days prior to the due date for submission of the tax return; (3) The Commissioner may grant an application under this section within 7 days of the receipt of the application if the Commissioner is satisfied that there is reasonable cause, and shall notify the applicant in writing of the extension of time. Provided that if the Commissioner does not communicate within this time, the request will be deemed to have been granted.*" Amend section 47(5) to read as follows, "*The Commissioner shall repay the overpaid tax within a period of one year from the date of application, failure to which the amount due shall attract an interest of 1% per month or part thereof of such unpaid amount after the period of one year.*" This is to cushion businesses from delays in processing tax refunds. The delays have an immediate impact on the businesses and impacts negatively on the competitiveness of the country regionally.
222. Amendments to subsections (1)(b) and (1)(c) of section 59 to read as follows, "*(b) furnish information relating to the tax liability of any person in the manner and within reasonable time as specified in the notice but in not less than twenty-one days; or (c) attend, within reasonable time but in not less than twenty-one days, at the time and place specified in the notice, for the purpose of giving evidence in respect of any matter or transaction appearing to be relevant to the tax liability of any person.*" Additionally, there should be included a new subsection 59(5) to read as follows, "*Other than in the case of alleged gross or wilful neglect, evasion, or fraud by, or on behalf of, the taxpayer, for purposes of subsection (1) the records, clarifications or information required by the Commissioner or an authorised officer shall be limited to the duration as provided for under Section 23(1)(c).*" These amendments will ensure reasonable and fair requests are served upon taxpayers.

Miscellaneous Fees and Levies Act

223. Deletion of proposed amendment under clause 18 as it will defeat the recent government effort to open up the local market for the EPZ enterprises whose export markets have been affected by the COVID-19 pandemic.

Capital Markets Act

224. Deletion of proposed amendment under clause 27 because there is no legal basis for regulation of private equity and venture capital companies by the CMA. There is also no provision for a definition for “public funds” which leaves room for misinterpretation. The proposal erodes the goodwill of Kenya as an investment destination.

Committee’s Observation

The amendment seeks to provide for licensing to enable regulation of private equity venture capital funds which access pension funds. The Investment Guidelines under the Retirement Benefits Regulations were amended in 2015 to allow pension schemes to invest up to 10% of their assets in private equity funds and venture capital funds licensed by CMA. However, the Capital Markets Act was not amended to provide for the same.

Kenya Revenue Authority Act

225. Amendment to delete section 15A(3) whose penalty is very punitive especially given that the banks are providing a pro-bono service to the KRA. Further, the penalties are extremely punitive for banks and do not take into account weekends, public holidays and even system challenges that could prevent the banks from complying with the KRA requirement.

Committee’s Observation

The purpose of the section is to facilitate the collection and timely remittance of taxes through the banks and to discourage the retaining of such funds by the commercial banks for their own benefit beyond the allowable statutory period of 2 days from the date of collection at the expense of taxpayers and the Government. In addition, the delays affect taxpayers negatively since the relevant taxes must reflect in the KRA clearance system for goods to be cleared in the case of an importer.

Excise Duty Act

226. Amend section 10 by deleting the words “shall” and “once every year” and substituting thereof with the words “may” and “every two years” respectively. This will create a more predictable excise review and ensure constancy in consumer pricing. This will also allow the holding of excise duty increases in the FY 2020/21 to help mitigate the effects of COVID-19. Amendment by deleting imported glass bottles appearing in part 1 paragraph 1 of the First Schedule. This will prevent price increases to the final consumer. **(the proposal was adopted by the Committee).**

3.29 UBER KENYA LIMITED

In their memorandum dated 24th May 2020, Uber proposed the following amendments to the Bill: -

Income Tax Act

227. Further amendment to proposed paragraph 12 under clause 9 by deleting the word “one” appearing just after the word “be” and replacing thereof with the word “zero” because the proposed rate is quite high especially on businesses that have already been significantly

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affected by the adverse economic climate. **(Committee agreed to retain digital service tax at the rate proposed by the Bill at 1.5 %)**

228. Further amendment to the proposed section 12E under clause 4 to include the following proviso, “(3) *The DST shall be suspended when international consensus is reached by the member of the inclusive framework and the rules enter into force.*” This will allow the suspension of the DST when international consensus is achieved.

Value Added Tax

229. Deletion of proposed amendments under clause 10 which is against the principle of fairness. It will be administratively burdensome on the purchaser and will make it more difficult to obtain VAT refunds due to an increase in the instances where input VAT may be disallowed **(the proposal was adopted by the Committee).**

Tax Procedures Act

230. Amendment to section 8 to include the applicable administrative provisions for the registration and charging of the DST. Amendment to section 42B to read as follows, “(1) *A taxpayer (either resident or non-resident) is required to remit the digital service tax in accordance with the dates specified in 12(E) of the ITA via the i-Tax portal; (2) Where the taxpayer fails to comply with subsection (1), the Commissioner may appoint an agent for the purpose of collection and remittance of digital service tax to the Commissioner; and (3) The Commissioner may revoke an appointment under subsection (1).*” This will enhance the ease of doing business.

Committee observation

Implementation of DST/ Administrative provisions will be dealt with through subsidiary legislations.

231. Amendment to include applicable administrative provisions with regard to record keeping and filing of returns by non-residents. Amendment to the definition of “permanent establishment” to include a proviso as follows, “*Provided that: (ii) the registration by a non-resident person without a permanent establishment for the digital service tax shall not be deemed to create a permanent establishment for the non-resident person.*”. This is owing to the need for alternative tax mechanisms.

Committee observation

Implementation of DST/Administrative provisions will be dealt with through subsidiary legislations.

232. Amendment to include a provision for the DST to apply with unilateral tax credits applicable to Kenyan sourced income subjected to tax in the country of residence of the non-resident digital marketplace operator where there is no DTT between Kenya and the country of residence of the operator. This will enable the operator to claim a tax credit in Kenya for taxes paid on the same income in its country of residence.

Committee observation

Digital service tax targets income of companies providing digital platforms for transacting. The target is the income that the non-resident companies derive from Kenya by offering such platforms without having a physical presence in Kenya.

Resident companies and the non-residents companies with permanent establishments will offset the digital service tax against other taxes.

3.30 BAKCOMPRESSOR LTD Version

233. They were opposed to the introduction of the Digital Service Tax because Organisation for Economic Co-operation and Development (OECD) officials have noted publicly that taking steps towards adopting a unilateral measure undermines the work of OECD/Inclusive Framework to develop an international consensus on the taxation of cross-border transactions and should not be pursued in favour of letting OECD/Inclusive Framework finish its work.

Committee Observation

The proposed amendment is to provide a framework for taxing income derived through a digital marketplace. The framework provides that the residents companies and the non-residents companies with permanent establishments will offset the digital service tax against other taxes. Therefore, for residents, this will be a form of an advance tax to be offset when making the annual returns. Digital service tax targets income of companies providing digital platforms for transacting. The target is the income that the non-resident companies derive from Kenya by offering such platforms without having a physical presence in Kenya. It is to be noted that most companies have also shifted their operations online, moving away from the traditional form of doing business where one requires physical outlets to transact business. This has led to loss of revenue to the Government.

3.31 BOLT SUPPORT (K) LIMITED

234. In their memorandum dated 27th May, 2020, Bolt raised the following areas of concern with regards to the DST; ambiguity in the definition of a “digital marketplace”, lack of clarity on the tax base to be subject to the DST and whether this includes goods and services, lack of clarity as to who will be appointed by KRA to act as the collection agent of DST and absence of a validity/sunset clause to the proposed DST once the harmonised tax is rolled out considering the ongoing international efforts at the UN and OECD to design a globally acceptable DST regime. They stated that all stakeholders, the government and the entirety of the citizenry are able to achieve an aligned understanding of the purpose of the taxation regime being introduced, the implementation modalities and its potential positive impacts will go a long way to further boost investor confidence in Kenya and significantly improve the investment climate within the country in general.

Committee Observation

The proposed amendment is to provide a framework for taxing income derived through a digital marketplace. The framework provides that the residents companies and the non-residents companies with permanent establishments will offset the digital service tax against other taxes. Therefore, for residents, this will be a form of an advance tax to be offset when making the annual returns. Digital service tax targets income of companies providing digital platforms for transacting. The target is the income that the non-resident companies derive from Kenya by offering such platforms without having a physical presence in Kenya. It is to be noted that most companies have also shifted their operations online, moving away from the traditional form of

doing business where one requires physical outlets to transact business. This has led to loss of revenue to the Government.

3.32 NATIONAL SOCIAL SECURITY FUND (NSSF)

235. In their memorandum Ref:SF/(S)ADM/1/67/VOL.III/(206) dated 21st May, 2020, they opposed the deletion of paragraph 45, Part 1 of the First Schedule to the ITA because NSSF is the 1st pillar provider of basic social security to the Kenyan workers. Article 43(1)(e) of the Constitution makes social security a right to every Kenyan. Those unable to contribute for social security are catered for by the Government under Article 43(3) of the Constitution. Therefore, NSSF supports the Government in providing this right to Kenyans. Taxation of NSSF's income will erode the benefit to its members and goes against Government policy to provide social security **(the proposal was adopted by the Committee)**.
236. They also opposed the deletion of paragraph 53, Part 1 of the First Schedule to the ITA because older persons who are retirees fall within the category of vulnerable members of society will receive lower pensions reducing their disposable income **(the proposal was adopted by the Committee)**.
237. Finally, they opposed the introduction of a penalty of KSh. 100,000 and KSh. 1,000 per day of continuing default for failure by a scheme to submit an actuarial evaluation report to the Retirement Benefits Authority (RBA) because the penalty will impact on the costs of managing NSSF thus reducing member interests.

Committee's Observation

The Retirement Benefits Act does not provide for sanctions in case of failure or delay in submission of the actuarial valuation reports within the same period. The proposed amendment is therefore aimed at ensuring compliance by the pensions schemes to submit actuarial valuation reports of the scheme funds to the Authority within the specified timeline.

3.33 THE KENYA CLIMATE CHANGE WORKING GROUP

238. In their memorandum dated 20th May, 2020, they opposed the deletion of paragraph 45 of the First Schedule to the VAT Act because the imposition of VAT on solar powered development and generation equipment will erode numerous gains that have been made towards the achievement of universal energy access by 2022 and Sustainable Development Goal (SDG) 7 which aims at ensuring access to affordable, reliable, sustainable and modern energy for all.

Committee's Observation

The exemption for inputs for manufacture of these items is provided under paragraph 48. This amendment will therefore discourage importation of the items but encourage them to be manufactured locally.

239. They also opposed the deletion of paragraphs 65 and 67 of the First Schedule to the VAT Act because it will increase the price of LPG hence encourage use of sources of fuel that are characterised by polluting and toxic fumes which puts households at risk from contracting respiratory ill health especially among women and children.

Committee's Observation

The proposal to delete paragraph 65 was not adopted by the Committee because paragraph 66 provides for exemption of inputs for the manufacture of clean cooking stoves. **PDF Compressor Free Veriloh** therefore encourage the local manufacture of clean cooking stoves.

3.34 KENYA NATIONAL CHAMBER OF COMMERCE AND INDUSTRY (KNCCI)

In their memorandum Ref:ADM/57 dated 28th May, 2020, they submitted as follows:-

Income Tax Act

240. They were opposed to the introduction of Minimum Tax and proposed that KRA should continue using the audit process to determine the accuracy of losses as reported by the companies. This is because some companies such as start-ups and those in heavy capital investment areas take up to more than seven (7) years to break even.

Committee's Observation

The purpose of introducing minimum tax is to ensure that companies that are on perennial losses contribute towards provision on infrastructure by the Government.

241. They also opposed the introduction of the Digital Service Tax and proposed that comprehensive regulations on the targeted income and mode of collection of the digital service tax should first be rolled to facilitate easier administration of the tax. This is because resident companies are already taxed on corporate profits earned, value added tax or withholding taxes for service and this tax will therefore discourage entrepreneurial effort and will serve as a double tax.

Committee Observation

Resident companies and non-resident companies with permanent establishments in Kenya will offset the DST against other taxes. This therefore means that there will be no double taxation.

242. They proposed that the proposal to tax registered home ownership savings plan should be deleted in order to encourage investment in home ownership and for the government to achieve the provision of affordable housing to citizens. To increase citizens' disposable income especially now during the COVID-19 pandemic.

Committee's Observation

There has been a low uptake of Home Ownership Savings Plan (HOSP) because most people prefer arrangements that allow for occupation of a house while paying for it rather than saving to buy a house. Additionally, the Government has introduced various affordable housing initiatives such as affordable housing scheme relief and mortgage interest deduction to encourage individuals to own a home which is what most individuals would prefer.

243. They also proposed that all exemptions should be retained as they are reducing disposable income of the old and lower income earners especially during this period that everyone especially the vulnerable are trying to manage the effects of COVID-19 is not appropriate.

244. They proposed that clause 34 should be deleted for fair administration of justice.

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Value Added Tax Act

245. They opposed the deletion of paragraphs 13 and 18 of the Second Schedule to the Act because the cost will be borne by the final consumers who currently have limited financial resources due to the negative effects of COVID-19 (**the proposal was adopted by the Committee**).
246. They proposed that clauses 11 and 12 should be deleted because it is a re-introduction of provisions that were proposed in the Tax Laws (Amendment) Bill. As a result of the public participation process and discussion on the floor of the House, the proposals were dropped in the Tax Laws (Amendment) Act as they were deemed to go against the equity, fairness canon. (**The proposal to delete clause 12 was adopted by the Committee**).

Miscellaneous Fees and Levies Act

247. They proposed that a further amendment should be made to section 9 to include an exemption on importation of products that will be used to manufacture products to aid in the fight against COVID-19 such as masks because EPZ are importing to manufacture essential items in the fight against COVID-19 such as masks. Adding 2.5% on the products purchased is likely to increase the cost of manufacturing such products and hence hamper the government's fight against COVID-19.

Public Roads Toll Act and the Road Levy Fund Act

248. Delete clauses 21 to 26 and 31 to avoid double taxation and negatively impacting the cost of doing business.

Committee's Observation

The Committee rejected the proposal to delete all the proposed amendments to the Public Roads Toll Act and the Road Levy Fund Act on the basis that there was need to provide for an effective legal framework for tolling in Kenya. The committee observed that the payment of tolls would not be mandatory for all road users as the government had already provided for alternative roads concurrent to the toll roads. As such, the use of toll roads would only be for convenience purposes e.g. the Nairobi Expressway which will be used concurrently with Mombasa Road.

3.35 MINISTRY OF TRANSPORT, INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT AND PUBLIC WORKS

249. In their letter Ref: MOTIHUD/1/51.14VOL.1(16) dated 29th May, 2020, the Ministry supported the proposed amendments to the Public Roads Toll Act, Cap 407. However, they were of the view that clause 25 of the Bill should be further amended so as to ensure that Transit Tolls continue to be paid to the Road Maintenance Levy Fund for exclusive use by Kenya National Highways Authority (KeNHA) in the maintenance of international roads and that the Fund established should receive all toll proceeds except from transit tolls. Consequently, that the proposed amendments to the Road Maintenance Levy Act should be deleted. (**This proposal was adopted by the Committee**).
250. The Ministry submitted that transit tolls should be applied for the maintenance of a specific road which is international and should not be paid into the National Road Tolls Fund since there is no guarantee that the roads that carry the transit cargo will benefit from the Fund and that they may be denied maintenance.

Committee's Observation

The committee agreed with the proposed amendments and also observed that vehicles paying transit tolls need not necessarily use a Toll road. However, when they use such roads, they should pay the same at rates equivalent to locally registered vehicles. Further, that investors in Tolls Road projects should not benefit from the funds that are collected from transit vehicles at border entry points because those cars may not use toll roads.

3.36 KOKO NETWORKS

251. In their letter dated 9th June, 2020, they were opposed to the introduction of VAT to clean cooking stoves because it is against the Government's policy for 100% clean cooking and it will increase the risk for the most vulnerable to COVID-19.

Committee's Observation

These are finished products imported for sale with no local value addition. Further, the incentive was meant to be effected for a short while pending full realisation of local capacity. A lot of investment has been put in place to encourage production of clean cooking stoves locally.

3.37 SHADE.CO.KE

252. In their letter Ref: SDL/DIR/002/2020 dated 15th May, 2020, they proposed that the Excise Duty Act should be amended to remove the 20% excise duty on the stakes placed by a punter on a platform provided by a bookmarker and the introduction of excise duty on the amount wagered or staked because it has made many betting firms cash strapped hence cutting down on their sponsorships to local sports clubs. **(The proposal to remove excise duty on the stakes place by punters was adopted by the Committee. The reason behind this was that the high level of taxation had led to punters placing bets on foreign platforms that are not subject to tax and thereby denying the Government revenue).**

253. They proposed that section 4(1A), Paragraph 5 Part II of the First Schedule to the Excise Duty Act and the definition of "amount wagered or staked" under the definitions in Part III of the First Schedule to the Excise Duty Act. They proposed that the withholding tax on winnings and punters should be reduced to 10%.

Committee's Observation

This tax is on winnings by the punters and therefore not a tax on the betting firms. It is a tax on the income of the punters and considering that little or no expenditure is incurred against that income.

254. They opposed the introduction of minimum tax because it goes against the primary rule in taxation of profits that only incomes earned ought to be taxed.

Committee Observation

The proposed amendment seeks to expand the tax base and ensure that companies which are on perennial losses contribute towards provision of infrastructure by the Government.

255. They proposed that the digital service tax should not apply to the betting industry because it is already the highest taxed industry in Kenya and introduction of the new tax will lead to the collapse of the industry.

The framework provides that the residents companies and the non-resident companies with permanent establishments will offset the digital service tax against other taxes.

3.38 AMERICAN CHAMBER OF COMMERCE, KENYA (AMCHAM KENYA)

256. In their letter dated 21st May, 2020, they proposed that the definition of digital market place should be amended to mean, “*an online service, other than a digital financial marketplace, whose main purpose or one of the main purposes is to facilitate the sale or hiring by users of particular services, goods or other property; and the service enables users to sell or hire particular services, goods or other property to other users or to advertise or otherwise offer particular things for sale or hire to other users*”. The term “*digital financial marketplace*” should be defined as “*an online service which facilitates payments, lending, the trading of financial instruments, commodities or foreign exchange*”. The current definition of digital marketplace is ambiguous since it does not recognise the diverse nature of digital platforms and the variety of transactions which would be excluded from the scope of DST. In addition, international best practice is to exclude online financial transactions from the scope of DST which is key as Kenya is a thriving Fin Tech hub and because most of these services are regulated and offered by entities with a physical presence in Kenya. Such income is already within the tax net.

257. They also proposed that section 12E should be amended by inserting the words “*and exceeds Kenya shillings 50 million in a year of income*” immediately after the word “*marketplace*”. This is to protect lower income businesses which will only be subject to turnover tax or the corporation tax regime. They proposed that section 12E(2) should be amended as follows, “The tax payable under subsection (1) shall be due on or before the 20th day of the fourth month, the sixth month, ninth month and the twelfth month of a year of income”. This is for ease of administration of the tax.

258. They also proposed that the commencement date of DST should be 1st July, 2021 in order to provide ample time for businesses affected by the DST to make the necessary system and compliance adjustments to cater for DST and to ensure compliance. Finally, they proposed that section 12E should be amended by inserting the following new paragraph, “*(ii) a non-resident person without a permanent establishment in Kenya subject to the digital service tax shall not be subject to any other tax under this Act*”. This is to ensure that non-residents who are unlikely to recover the DST paid in Kenya, will not be subject to additional taxes in Kenya such as withholding tax.

3.39 OFFICE OF THE ATTORNEY GENERAL

259. In their letter Ref:AG/LDD/578/1/88 dated 29th May, 2020, they proposed that the Bill should be amended in clause 19(a)(ii) by deleting the words ‘*two hundred million*’ appearing in paragraph (xxii) and substituting therefor the words ‘*five billion*’ and clause 19(b)(i) by deleting the words ‘*two hundred million*’ appearing in paragraph (iv) and substituting therefor the words ‘*five billion*’. This is because the exemption is very critical especially in times of disasters, pandemics or any other calamity that the country may face. In addition, there are certain class of investments whose value may be huge hence necessitating government intervention to promote such kind of investments through the exemption of the levy and fees.

Committee's Observation

The proposed amendments were rejected as leaving the discretion to the Cabinet Secretary may be subject to abuse.

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3.40 NATIONAL TREASURY AND PLANNING

260. In their letter Ref: ZZ/TS/GP/30 dated 26th May, 2020 they proposed that the Bill should be amended in clause 19(a)(ii) by deleting the words '*two hundred million*' appearing in paragraph (xxii) and substituting therefor the words '*five billion*' and clause 19(b)(i) by deleting the words 'two hundred million' appearing in paragraph (iv) and substituting therefor the words 'five billion'. This is because the exemption is very critical especially in times of disasters, pandemics or any other calamity that the country may face. In addition, there are certain class of investments whose value may be huge hence necessitating government intervention to promote such kind of investments through the exemption of the levy and fees.

Committee's Observation

The proposed amendments were rejected as leaving the discretion to the Cabinet Secretary may be subject to abuse.

261. They proposed that clause 8 should be amended by deleting paragraph 53 because the proposed amendment will negatively impact the lives of the senior citizens especially during this time of COVID-19 pandemic. They also proposed that clause 5 should be amended by deleting item (f). **(These proposals were adopted by the Committee).**

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4 COMMITTEE RECOMMENDATION

262. The Committee having considered the Finance Bill, 2020 recommends that the House approves the Bill with amendments as proposed in the schedule.

5 SCHEDULE OF PROPOSED AMENDMENTS

The Committees proposed the following amendments to be considered by the House in the Committee stage:-

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CLAUSE 1

263. **THAT**, the Bill be amended in clause 1 —

- (a) by inserting the expression “13A,” immediately after the expression “9,” in paragraph (a);
- (b) by inserting the following new paragraph immediately after paragraph (a) —
 - (ab) section 11 (a) (i) and (iv), 11(d), 19 (a) (i) and 12 (a) on 1st July, 2021;

Justification

To provide that the specified clauses shall commence on 1st January, 2021 and 1st July, 2021, respectively.

CLAUSE 2

264. **THAT**, the Bill be amended by deleting the proposed clause 2 and substituting therefor the following new clause —

- “2. Section 6A of the Income tax Act is amended in subsection (1) by deleting-
- (a) the words “one hundred and forty -four thousand shillings” and substituting therefor the words “two hundred and eighty-eight thousand shillings”; and
 - (b) the word “ten” and substituting therefor the word “fifteen”.

Justifications

This amendment retains the amendment as was contained in the Bill, that is, increasing the upper threshold for income subject to rental income tax from Ksh. 10,000,000 to Ksh. 15,000,000.

The amendment also amend the lower threshold of income subject to rental income tax from Ksh. 144,000 to Ksh. 288,000. This amendment raises the lower threshold to match the lower Pay As You Earn band in accordance with the amendments that were made in the Tax Laws (Amendment) Act, 2020.

CLAUSE 5

265. **THAT**, the Bill be amended in clause 5 by deleting paragraph (f).

Justification

The amendment is intended to retain the allowable deduction of expenditure incurred by a person in the construction of a public school, hospital, road or any similar kind of social infrastructure. This is to encourage companies to invest in corporate social projects.

CLAUSE 8

266. **THAT**, the Bill be amended in clause 8—

- (a) by deleting paragraph (b) ;

Justification

The Bill proposed to remove the exemption from income tax that was available for income of the National Social Security Fund. The amendment is intended to retain the exemption for income of the National Social Security Fund. The deletion of the amendment is intended to protect the benefits of the members of the NSSF.

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

(c) by deleting the both paragraphs 53;”

Justification

The Income Tax Act currently contains two paragraphs 53. One paragraph 53 (Monthly pension granted to a person who is sixty-five years of age or more) was made in the Finance Act, 2007. Thereafter in the Finance Act, 2016 another amendment was made inserting another paragraph 53 (Income from employment paid in the form of bonuses, overtime and retirement benefits)

(c) by inserting the following new paragraph immediately after paragraph (c) –
“ (d) by inserting the following new paragraph immediately after paragraph 52-
53. Monthly pension granted to a person who is sixty-five years of age or more.”

Justification

The amendment is intended to correct the error and to retain the exemption from Income Tax the monthly pension granted retirees.

NEW CLAUSE

267. **THAT**, the Bill be amended by inserting the following new clause immediately after clause 9-

9A. The Eight Schedule to the Income Tax Act is amended in paragraph 3 by deleting sub-paragraph (2) and substituting therefor the following sub-paragraph-
(2) The gain accruing to a company on any transfer of machinery classified in paragraph 1 (b) of the Second Schedule is not chargeable to tax under section 3(2) (f).

Justification

The amendment is to align the cross reference in the Eight Schedule to the amendments that were made to the Second Schedule in the Tax Laws (Amendment) Act, 2020.

NEW CLAUSE

268. **THAT**, the Bill be amended by inserting the following new clause immediately after clause 10-

10A. Section 68 of the Value Added Tax Act, 2013, is amended by inserting the following new sub-section immediately after subsection (2) —
(2A) Notwithstanding the repeal of paragraph 102 of the First Schedule, the exemption of goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangement with the Government, shall continue for existing projects for the remaining period of the agreement.

Justification

The amendment is intended to save the VAT exemption under paragraph 102 that was available for existing projects under the special operating framework arrangement with the Government. Paragraph 102 was deleted in the Tax Laws (Amendment) Act, 2020.

CLAUSE 11

269. **THAT**, the Bill be amended in clause 11 —

(a) in paragraph (a) by –
(i) inserting the following sub-paragraph immediately after sub-paragraph (i)–

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“(ia) deleting tariff numbers 8309.90.90 and its corresponding description appearing in paragraph 39 (3)”;

Justification

The amendment is to remove the exemption of aluminium pilfer proof caps under tariff 8309.90.90. The exemption for these products is no longer relevant for the stakeholders.

(ii) deleting paragraph (viii).

Justification

The amendment in the Bill sort to delete the exemption that was available for machinery and equipment in the construction of plastic recycling plants.

This amendment seeks to restore the that was intended to encourage investment in plastic recycling plants and was only inserted in 2019. It has not been in place long enough to allow for investment in plastic recycling.

(iii) inserting the following new paragraph immediately after paragraph (viii)–
(ix) deleting paragraph 108;

Justification

The supply of maize flour under paragraph 108 was under exempt and has been moved to the second schedule on zero rated items. It is intended to make flour cheaper and affordable.

CLAUSE 12

270. **THAT**, the Bill be amended in clause 12 by inserting the following paragraph immediately after paragraph (c) –

(d) 20. The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight.

Justification

The amendment is to zero rate the supply of flour. It is intended to make flour cheaper and affordable.

NEW CLAUSE

271. **THAT**, the Bill be amended by inserting the following new clause immediately after clause 13-

13A. The Excise Duty Act, 2015 is amended by deleting section 10 and substituting therefor the following new section-

10. (1) Despite section 8, the Commissioner shall, with the approval of the Cabinet Secretary, by notice in the *Gazette*, adjust the specific rate of excise duty once every year to take into account inflation in accordance with the formula specified in Part I of the First Schedule.

(2) The notice under subsection (1) shall be laid before the National Assembly within seven days from the date of publication.

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- (3) The National Assembly shall, within twenty-eight sitting days of the receipt of the notice under sub-section (2), consider the notice and make a resolution either to approve or reject the notice.
- (4) The notice shall cease to have effect, if a resolution disapproving the notice is passed by the National Assembly.

Justification

The amendment is to provide that the Commissioner should seek approval of the Cabinet Secretary before making inflation adjustment. Further, it is to require that the Gazette notice be laid before the National Assembly. The National Assembly should have power to check the powers it has donated to the Commissioner to make inflation adjustments and, may or may not approve the adjustment.

CLAUSE 14

272. **THAT**, the Bill be amended by deleting clause 14 and substituting therefor the following new clause-

14. The First Schedule to the Excise Duty Act, 2015 is amended -

(a) in paragraph 1 of Part 1 by-

(i) deleting the expression “10%” appearing in the description “Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic and spirituous beverages of alcoholic strength not exceeding 10%” and substituting therefor the expression “6%”;

Justification

The amendment is to reset the threshold of alcoholic beverages subject to Excise Duty from “8%” to “6%”. The amendment will enhance revenue collection.

(ii) by deleting the expression “10%” appearing in the second column against the description “Spirits of undenatured ethyl alcohol; spirits beverages of alcoholic strength exceeding 10%” and substituting therefor the expression “8%”;

Justification

The amendment is to reset the threshold of spirit beverages subject to Excise Duty from “8%” to “6%”. The amendment will enhance revenue collection.

(b) by deleting paragraph 5 in Part 1.

Justification

The amendment is to remove excise duty on betting. This is to reverse the negative effects of this tax on the industry, which has led to closure of betting companies in Kenya, yet international players continue to operate.

CLAUSE 19

273. **THAT**, the Bill be amended in clause 19 –

(a) in paragraph (a) (iv) by deleting the words, “all goods, including materials supplies” appearing in the proposed new paragraph (xxv);

Justification

The amendment is to provide that the exemption from Import Declaration Fee is only available specifically to equipment, machinery and motor vehicles for the official use by the Kenya

Defence Forces and the National Police. The use of the words “all goods” may lead to abuse of the exemption

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(b) in paragraph (i) by deleting the words, “all goods, including materials supplies” appearing in the proposed new paragraph (ix);

Justification

The amendment is to provide that the exemption from the Railway Development Levy is only available specifically to equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and the National Police. The use of the words “all goods” may lead to abuse of the exemption.

CLAUSE 21

274. **THAT**, the Bill be amended in clause 21 by deleting paragraph (a) and substituting therefore the following new paragraph—

(a) by deleting the definition of the term “toll collector” and substituting therefore the following new definition—

“toll collector” means a public toll collector appointed under section 4 or a private toll collector appointed under section 4B.

Justification

The amendment seeks to recognize the two categories of toll collectors provided for in the Act in the definition of the term “toll collector” i.e. public toll collector under section 4 and private toll collector under section 4B.

CLAUSE 22

275. **THAT**, the Bill be amended in clause 22 by —

(a) inserting the following paragraph immediately before paragraph (a)—

“(a) by inserting the following sub-section immediately after sub-section (1)—

(1A) Notwithstanding subsection (1), a private toll collector shall only levy toll and collect monies payable on a public toll road constructed under an agreement entered into under section 4A.

(b) by renumbering the existing paragraphs as (b) and (c).”

Justification

The amendment is to provide specifically that private toll collectors may only collect from roads constructed under Public Private arrangements, and to avoid instances of toll collection on roads constructed using public funds.

CLAUSE 25

276. **THAT**, clause 25 of the Bill be amended in the proposed new section 6A by—

(a) inserting the words “except transit tolls” immediately after the word “tolls” appearing in subsection (2); and

(b) inserting the following new subsection immediately after subsection (2)—

(2A) The purpose of the Fund shall be to provide funds for the —

(a) proper functioning of toll roads and toll stations; and

(b) development, repair or maintenance of roads as the Minister may direct.

Justification

The amendment seeks to ensure that the sources of funds for the Public Roads Toll Fund do not include monies from transit tolls. Further, the amendment seeks to provide for the purposes of the Fund.

CLAUSE 26

277. **THAT**, clause 26 of the Bill be amended by –

- (a) renumbering the proposed amendment to subsection (2) as paragraph (b); and
- (b) inserting the following new paragraph immediately before the renumbered paragraph (b)-
 - (a) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding five thousand” appearing in the proviso to subsection (1) and substituting therefor the words “shall upon conviction, be liable to a fine not exceeding fifty thousand”.

Justification

The amendment seeks to enhance the penalty for failure or fraudulently passing through a toll station without paying or failure to use the designated route for passage through a toll station.

CLAUSE 30

278. **THAT**, the Bill be amended by deleting clause 30.

Justification

The amendment is to delete the proposed new definition of the term “consolidators” which sort expand the definition to include specific importers. The amendment is to retain the definition that was made in the Finance Act, 2019. This will ensure that consolidators are well regulated as they will be responsible for the consolidated cargo.

CLAUSE 31

279. **THAT**, clause 31 of the Bill be deleted.

Justification

The amendment seeks to ensure that transit tolls levied under the Public Roads Toll Act are remitted to the Road Maintenance Levy Fund as currently provided for in the Act and not to the Public Roads Toll Fund proposed to be established.

CLAUSE 33

280. **THAT**, the Bill be amended by deleting the proposed amendment in clause 33 and substituting therefor the following new clause-

- “Section 16 of the Kenya Revenue Authority Act, 1995 is amended-
- (a) in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph-
 - “(a) at least two percent of the revenue actually collected by the Authority in the previous financial year;
- (b) in subsection (1) by inserting the following new paragraph immediately after paragraph (b)-
 - “(ba) any commission received by the Authority for collecting any revenue on behalf of a county government or government agency;”
- (c) by inserting the following subsection immediately after subsection (1)-

(1A) Subject to subsection (1) (ba), the commission received by the Authority shall not exceed two percent of the total revenue collected on behalf of the county government or government agency.

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Justifications

The amendment is to ensure that the Kenya Revenue Authority is allocated a minimum of 2% of the revenue collected in the previous financial year.

The amendment also provides that the Kenya Revenue Authority may receive a commission of not more than 2% of the revenue collected on behalf of a county government and that this should form part of the funds of the Authority.

CLAUSE 34

281. **THAT**, the Bill be amended in clause 34 in the proposed new section 20A (a) by deleting the words “twelve months” and substituting therefor the words “three years”.

Justification

The amendment is to provide that the limitation of time for matters against the Kenya Revenue Authority is three years. This is to comply with different decisions of the Courts that have held that the Public Authority Limitation of Action Act cannot apply to the Kenya Revenue Authority.

CLAUSE 37

282. Amend the clause by deleting the word “*registered*” appearing in the proposed new item (h) and substituting therefor the word “*licensed*”.

Justifications

The amendment seeks to ensure that the proposed protection of tax revenue held on behalf of the Kenya Revenue Authority by commercial banks and financial institutions during insolvency is effective by aligning the amendment to the language used in the Banking Act.

Section 4 of the Banking Act provides for the “licensing” of persons and not “registration” as used in the proposed amendment to the Insolvency Act. The amendment is necessary in order to give effect to the purpose of the amendment of the Insolvency Act, 2015, as stated in the Memorandum of Objects and Reasons for the Bill.

SIGNED.......... DATE.....18-6-2020.....

THE HON. JOSEPH LIMO, MP
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

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REPUBLIC OF KENYA



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NATIONAL ASSEMBLY
DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION SCHEDULE

FINANCE BILL (NATIONAL ASSEMBLY BILLS NO. 10 OF 2020)

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRPERSON	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRPERSON	
3. HON. JIMMY O. ANGWENYI, MGH, MP	Virtual.
4. HON. CHRISTOPHER OMULELE, MP	
5. HON. DR. ENOCH KIBUNGUCHY, MP	
6. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
7. HON. ABDUL RAHIM DAWOOD, MP	Virtual
8. HON. DANIEL E. NANOK, MP	
9. HON. ANDREW A. OKUOME, MP	Virtual
10. HON. DAVID M. MBONI, MP	
11. HON. KURIA KIMANI, MP	
12. HON. JOSEPH M. OYULA, MP	
13. HON. JOSHUA KANDIE, MP	
14. HON. LYDIA H. MIZIGHI, MP	
15. HON. MOHAMED ALI, MP	
16. HON. PURITY NGIRICI, MP	
17. HON. SAMUEL ATANDI, MP	
18. HON. STANLEY M. MUTHAMA, MP	
19. HON. EDITH NYENZE, MP	

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ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE FINANCE
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1. The following members acceded to the amendments proposed in the report to be considered during the Committee Stage having been physically present in the meeting:-
 - i. Hon. Joseph Limo, MP – Chairperson
 - ii. Hon. Isaac Ndirangu, MP – Vice Chairperson
 - iii. Hon. David Mboni, MP
 - iv. Hon. Kuria Kimani, MP
 - v. Hon. Joshua Kandie, MP
 - vi. Hon. Purity Ngirici, MP
 - vii. Hon. Samuel Atandi, MP
 - viii. Hon. Stanley Muthama, MP
 - ix. Hon. Edith Nyenze, MP

2. The following members acceded to the amendments proposed in the report to be considered during the Committee Stage having been virtually present in the meeting:-
 - i. Hon. Jimmy Angwenyi, MGH, MP
 - ii. Hon. Andrew Okuome, MP

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MINUTES OF THE 30TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 27TH MAY, 2020 IN 5TH FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM

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PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, MP
5. Hon. Shakeel Shabbir Ahmed, CBS, MP
6. Hon. Abdul Rahim Dawood, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. David M. Mboni, MP
9. Hon. Joseph M. Oyula, MP
10. Hon. Joshua C. Kandie, MP
11. Hon. Lydia Mizighi, MP
12. Hon. Purity Ngirici, MP
13. Hon. Stanley M. Muthama, MP
14. Hon. Samuel Atandi, MP
15. Hon. Edith Nyenze, MP

ABSENT WITH APOLOGY

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Daniel E. Nanok, MP
3. Hon. Francis K. Kimani, MP
4. Hon. Mohamed A. Mohamed, MP

INATTENDANCE

SECRETARIAT

1. Mr. Robert Nyaga - Deputy Director, PBO
2. Ms. Leah Mwaura - Senior Clerk Assistant/Head of the Secretariat
3. Ms. Jennifer Ndeto - Principal Legal Counsel I
4. Ms. Laureen Wesonga - Clerk Assistant II
5. Mr. Josephat Motonu - Fiscal Analyst I
6. Mr. John Njoro - Serjeant-At-Arms

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Meeting to be briefed on the Finance Bill, 2020**
6. Adjournment/Date of the next meeting

MIN.NO.NA/F&NP/2020/143: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10.30am and a prayer was said. The Chairperson then welcomed Mr. Josephat Motonu to brief the Committee on the Finance Bill, 2020.

MIN.NO.NA/F&NP/2020/144: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2020/145: BRIEFING ON THE FINANCE BILL, 2020

The Committee was informed that Finance Bill, 2020 was not introducing any tax incentives but instead was seeking to raise additional revenue to finance the budget for the 2020/21 FY. A highlight on the specific tax laws that were being targeted was made including the impact to revenue and ordinary citizens.

MEMBERS' DELIBERATIONS

1. Members noted that it was important for KRA be allocated at least 2% of the revenue that they collect each financial year so as to make the Authority financially independent and to improve their effectiveness and efficiency in tax collection.
2. It is important to establish the amount of Import Declaration Fees (IDF) paid in other EAC countries by EAC countries before increasing Kenya's IDF to EAC countries because it may discourage countries in the region from using Kenya as the preferred port.
3. Members noted that it might be cumbersome for KRA to reconcile whether the amount paid by a taxpayer is correct if taxpayers were given the responsibility to ensure that their suppliers declare their invoices in the tax return.
4. Exempting Kenya Defense Forces (KDF) from payment of IDF may not be fair because they already benefit from AFCO.
5. Members observed that some taxes that had been introduced/changed recently have been proposed to be amended in the Bill and this creates an unstable business environment in the country.
6. The proposal to tax individuals who are over 65 years of age was deemed unfair by the Committee because most of the people in this age bracket are faced with medical issues and need all the money that they can get to pay for their medical bills.
7. On the setting the minimum amount for payment of residential tax at KSh. 144,000 and the maximum amount at KSh. 15 million, the Committee noted that it was good to have a minimum threshold but it wasn't necessary to have the maximum threshold because individuals getting rental income above KSh. 15 million can refuse to pay the tax because they do not fall within the threshold.
8. Members noted that it is important to seek for information from KRA on their dispute resolution mechanism.

MIN.NO.NA/F&NP/2020/146: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 12.59p.m. The next meeting will be held on notice.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED..........DATE.....18/6/2020.....

MINUTES OF THE 31ST SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON MONDAY, 8TH JUNE, 2020 IN MINI CHAMBER, COUNTY HALL, PARLIAMENT BUILDINGS AT 2.00 PM

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PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, MP
5. Hon. Shakeel Shabbir Ahmed, CBS, MP
6. Hon. Abdul Rahim Dawood, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. David M. Mboni, MP
9. Hon. Francis K. Kimani, MP
10. Hon. Joseph M. Oyula, MP
11. Hon. Joshua C. Kandie, MP
12. Hon. Lydiah Mizighi, MP
13. Hon. Purity Ngirici, MP
14. Hon. Samuel Atandi, MP

ABSENT WITH APOLOGY

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Daniel E. Nanok, MP
3. Hon. Mohamed A. Mohamed, MP
4. Hon. Stanley M. Muthama, MP
5. Hon. Edith Nyenze, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of the Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Mr. Josephat Motonu - Fiscal Analyst I
5. Mr. John Njoro - Serjeant-At-Arms

NATIONAL TREASURY

1. Hon. (Amb.) Ukur Yatani - Cabinet Secretary
2. Mr. Maurice Oray - Deputy Commissioner, KRA
3. Mr. Wanyambura Mwambia - Senior Deputy Director, Micro & Fiscal Affairs
4. Mr. Joseph Ngugi - Deputy Director, Micro & Fiscal Affairs
5. Mr. Ephraim Munene - Manager, KRA
6. Ms. Nancy Ng'etich - Assistant Manager, KRA
7. Mr. Linstom Kinoti - Excise Head, KRA

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Meeting to be briefed on the Finance Bill, 2020 by the National Treasury**
6. Adjournment/Date of the next meeting

MIN.NO.NA/F&NP/2020/147: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2.25pm and a prayer was said. The Chairperson then called for introduction of those present before welcoming the CS, National Treasury, Hon. (Amb.) Ukur Yatani to brief the Committee on the Finance Bill, 2020.

MIN.NO.NA/F&NP/2020/148: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2020/149: BRIEFING ON THE FINANCE BILL, 2020 BY THE NATIONAL TREASURY

Hon. Yatani briefed the Committee on the Finance Bill, 2020 as follows:-

That the Finance Bill, 2020 intends to amend the following laws:-

Income Tax Act

1. the Bill proposes to raise the upper ceiling of monthly rental income that is subject to the 10% monthly rental income tax rate to KSh. 15 million per year from KSh. 10 million per year in order to enable more tax payers to join the simplified monthly rental income tax regime thereby enhancing compliance.
2. the Bill also proposes to introduce a minimum tax on gross turnover at a rate of one percent in order to bring on board companies who earn income from Kenya but end up declaring losses perpetually to avoid payment of corporate taxes yet they continue to enjoy the infrastructure facilities, such as roads, which continue being serviced by the government from tax revenue. This will enable such entities contribute to the development of the infrastructure facilities at a bare minimum of 1% of their turnover.
3. the Bill proposes to introduce a digital service tax at the rate of 1.5% of gross transactions value carried out on digital market place in Kenya. The digital service tax shall be payable by persons deriving or accruing income from Kenya. This is also meant to facilitate taxation of income of businesses that supply services virtually without creating physical presence in the country.

Value Added Tax Act

4. the Bill proposes to cushion farmers from the high cost of maize seeds for sowing by exempting the **corn or maize seeds from VAT**. This will support food production in the country.
5. the Bill also proposes to **exempt ambulance services from VAT**. This is in addition to medical, nursing and dental services which are already exempt from VAT. This proposal will further cushion Kenyans from the high cost of seeking medical services.
6. the Bill also proposes that for a person to deduct VAT on inputs, the supplier must have declared the sales invoice in his return. This amendment will mitigate against revenue leakage.

Miscellaneous Fees and Levies Act

7. the Bill proposes to harmonize the IDF rate at 1.5% for all manufacturers considering that those under the EAC duty remission scheme enjoy remission of import duty on their inputs/raw materials. Currently, the goods imported under the EAC duty remission scheme are subject to a flat rate of KSh. 10,000 irrespective of the value of the goods.
8. the Bill also proposes to exempt currency notes and coins imported by the Central Bank of Kenya from payment of Railway Development Levy. This will reduce the cost of printing notes and minting of coins. Central Bank of Kenya procures coins and currency

from an EPZ company which is treated as a foreign territory for the purpose of import duty and other fees levied on imported goods.

9. the Bill proposes to exempt all goods, including materials supplies, equipment, and other supplies, from the official use by the Kenya Defence Forces and National Police Service from the Railway Development Levy (RDL) and the Import Declaration Fee (IDF). This will reduce the cost of supplies to the security forces.

Removal of Tax Incentives

10. the Bill proposes to minimize tax expenditures in the Income Tax Act, Value Added Tax Act and Miscellaneous Fees and Levies Act by removing some tax incentives. A careful analysis of the tax incentives in the tax laws indicate that the tax expenditures are only benefitting few individuals, businesses and investors in very few sectors of the economy. The benefits are never passed to the consumer through reduced prices.

Tax Procedures Act

11. the Bill proposes to amend the Tax Procedures Act to enhance tax revenue collection through improved tax administration and compliance by introduction of the Voluntary Tax Disclosure Programme to allow taxpayers to disclose tax liabilities for the last five years prior to the 1st July, 2020. The programme will run for 3 years and will provide relief from penalties and interests on the tax disclosed by taxpayers during the period. The programme is meant to provide an opportunity for taxpayers to fully disclose and pay their tax liabilities in their records where the previous incomplete disclosures and non-payment were inadvertent.

Other Laws

12. amendments have been proposed to the Capital Markets Act and the Retirement Benefits Act to enhance regulation of the capital markets and the pensions sectors respectively. For instance, the Bill proposes to amend the Retirement Benefits Act to require pension schemes to submit actuarial reports and also provide for penalties for failure to do so, empower the Capital Markets Authority to regulate private equity and venture capital companies that have access to pension funds as an investment vehicle of such funds.
13. the Bill also seeks to amend the Public Roads Toll Act to enable the persons who enter into agreement with the Government to collect road tolls on roads constructed and managed under such agreements. The amendment further proposes establishment of a Fund into which the funds from the road tolls shall be deposited.
14. taxpayers pay their tax liabilities to the Government through banks appointed by Kenya Revenue Authority. However, in case of the banks collapsing or being placed under liquidation, the tax collected through the bank is treated like any other deposit to the bank which puts such funds at risk. In order to mitigate the risk, the Bill proposes to amend the Insolvency Act, 2015 to ensure that any tax revenue collections held by appointed agent bank at the point of receivership or liquidation shall rank among the preferential claims just like other statutory obligations owed to the Government. The intention is to reduce the risk of exposure on the tax revenues held by banks before transfer to the Central Bank in the event that a bank collapses.

Revenue Impact of the Finance Bill, 2020

15. The proposed amendments to the various tax laws as contained in Finance Bill 2020 are expected to raise an additional revenue of **KSh 38.85 billion** for the FY 2020/21 budget.

MEMBERS' DELIBERATIONS

1. Regarding the payment of tolls by motorists, the meeting was informed that the charges will be applicable to roads that have been built through Public Private Partnerships.
2. On the amendment to require a registered supplier to declare the sales invoice in their return, the meeting was informed that this is to enhance compliance on tax payment as it will enable KRA to compare the invoice that was provided to them and what will be declared by the supplier. Regulations on the tax invoice system will be presented to the National Assembly for consideration, the invoice will be reflected in the KRA system once it is issued.
3. Regarding the exemption of KDF from payment of RDL and IDF, the meeting was informed that the exemption will only be on goods imported for official use. The budgetary allocation for KDF does not include the amount paid for RDL and IDF and this therefore forces them to request for additional funds from the National Treasury whenever they are required to pay the two taxes. Additionally, AFCO only applies to alcohol and non-alcoholic beverages.
4. On the introduction of minimum tax, the meeting was informed that some big companies have not paid taxes for several years and the introduction of minimum tax will therefore ensure that all companies are captured in the tax bracket.
5. On the introduction of the Digital Service Tax, the meeting was informed that proposals on the imposition of taxes in the online spaces have been developed internationally. The National Treasury looked at the recommendations and domesticated them hence the proposal to introduce the tax in the Bill. The proposal in the Bill is to provide clarity on the payment of DST in terms of the rate and to ensure compliance. The meeting was also informed that foreigners that are doing business online have not been captured in the tax bracket which is unfair to local businesses.
6. The meeting was informed that Regulations for collection of VAT between a person doing business out of the country and the person they are doing business with locally have been prepared and will be submitted to the National Assembly for consideration.
7. Regarding tax refunds, the meeting was informed that the monies for this purpose are allocated by the National Treasury and approved by the National Assembly. More funds should be allocated so that all refunds are given in time.
8. Members were concerned that prices were likely to go up if VAT and DST is charged on the digital market place but they were informed that if VAT is not charged on the goods/services, it is a disadvantage to the local businesses as they will be cheaper. The introduction of the taxes will not occasion an increase in prices of the commodities because the businesses are in competition with other businesses.
9. The National Treasury was requested to provide submissions on:-
 - i. The issues that they are revising in the Bill; and
 - ii. Amount of Excise Duty that was collected from the betting industry in the current FY.

MIN.NO.NA/F&NP/2020/150: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 5.05p.m. The next meeting will be held on Wednesday, 9th June, 2020 at 10.00am.

**HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)**

SIGNED..........DATE..10/6/2020.....

MINUTES OF THE 32ND SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 10TH JUNE, 2020 IN 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM

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PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, MP
5. Hon. Shakeel Shabbir Ahmed, CBS, MP
6. Hon. Abdul Rahim Dawood, MP
7. Hon. David M. Mboni, MP
8. Hon. Francis K. Kimani, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Lydiah Mizighi, MP
11. Hon. Samuel Atandi, MP
12. Hon. Stanley M. Muthama, MP

ABSENT WITH APOLOGY

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Daniel E. Nanok, MP
3. Hon. Andrew A. Okuome, MP
4. Hon. Joseph M. Oyula, MP
5. Hon. Mohamed A. Mohamed, MP
6. Hon. Purity Ngirici, MP
7. Hon. Edith Nyenze, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of the Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Mr. Josephat Motonu - Fiscal Analyst I
5. Mr. John Njoro - Serjeant-At-Arms
6. Ms. Euridice Nzioka - Audio Officer

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Clause by clause consideration of the Finance Bill, 2020**
6. Adjournment/Date of the next meeting

MIN.NO.NA/F&NP/2020/151: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10.20am and a prayer was said. The Chairperson then welcomed the Legal Counsel to take the Committee through clause by clause consideration of the Finance Bill, 2020.

MIN.NO.NA/F&NP/2020/152: CONFIRMATION OF MINUTES

Agenda deferred

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MIN.NO.NA/F&NP/2020/153: CLAUSE BY CLAUSE CONSIDERATION OF THE FINANCE BILL, 2020

The Committee considered the Bill clause by clause and agreed as follows:-

INCOME TAX ACT

Clause 2: Amend by increasing the lower limit to KSh. 288,000

Justification

For equity in tax administration. This is to make the lower limit similar to the reduced Pay As You Earn (PAYE) bands and corporate tax rates as amended in the Tax Laws (Amendment) Act, 2020.

Clause 3: Agreed to

Clause 4: Agreed to

Clause 5

Paragraph (h): Agreed to

Paragraph (s): Agreed to

Paragraph (ss): Agreed to

Paragraph (u): Agreed to

Paragraph (v): Agreed to

Paragraph (x): Delete

Justification

To encourage companies to invest in the community within which they operate and to bolster the limited government investment in social services.

MIN.NO.NA/F&NP/2020/154: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 1.08p.m. The next meeting will be held at 2.00pm.

**HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)**

SIGNED..........DATE.....18/8/2020.....

**MINUTES OF THE 33RD SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 10TH JUNE, 2020 IN
5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 2.00 PM**

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PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, MP
5. Hon. Shakeel Shabbir Ahmed, CBS, MP
6. Hon. Abdul Rahim Dawood, MP
7. Hon. David M. Mboni, MP
8. Hon. Francis K. Kimani, MP
9. Hon. Joseph M. Oyula, MP
10. Hon. Joshua C. Kandie, MP
11. Hon. Mohamed A. Mohamed, MP
12. Hon. Samuel Atandi, MP
13. Hon. Stanley M. Muthama, MP
14. Hon. Edith Nyenze, MP

ABSENT WITH APOLOGY

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Daniel E. Nanok, MP
3. Hon. Andrew A. Okuome, MP
4. Hon. Lydiah Mizighi, MP
5. Hon. Purity Ngirici, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of the Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Mr. Josephat Motonu - Fiscal Analyst I
5. Mr. John Njoro - Serjeant-At-Arms
6. Ms. Euridice Nzioka - Audio Officer

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Clause by clause consideration of the Finance Bill, 2020**
6. Adjournment/Date of the next meeting

MIN.NO.NA/F&NP/2020/155: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 2.05pm and a prayer was said. The Chairperson then welcomed the Legal Counsel to take the Committee through clause by clause consideration of the Finance Bill, 2020.

MIN.NO.NA/F&NP/2020/156: CONFIRMATION OF MINUTES

Agenda deferred

MIN.NO.NA/F&NP/2020/157: **CLAUSE BY CLAUSE CONSIDERATION OF THE
FINANCE BILL, 2020**

The Committee considered the Bill clause by clause and agreed as follows:-

Clause 6: Agreed to

Clause 7: Agreed to

Clause 8

Paragraph 44: Agreed to

Paragraph 45: Delete

Justification

It will negatively affect the retirement benefits earned by members on retirement.

Paragraph 53: Delete

Justification

Retirees fall within the bracket of vulnerable members of the society and the amendment will therefore increase the social protection burden on the Government.

Clause 9: Agreed to

VALUE ADDED TAX ACT

Clause 10: Delete

Justification

KRA will be shifting its responsibility to the taxpayer and this will make the business environment unfriendly as the filing process will be cumbersome to the taxpayer.

Clause 11

(i) Tariff numbers 8802.11.00, 8802.12.00, 8802.20.00, 8803.30.00, 8805.10.00, 8805.21.00 and 8805.29.00 and their respective descriptions: Delete

Justification

The aviation industry has been heavily affected by the COVID-19 pandemic, imposition of taxes on the sector will therefore be detrimental to the industry. The amendment can be re-introduced once the industry recovers.

(ii) Paragraph 45: Agreed to

(iii) Paragraph 47: Agreed to

(iv) Paragraph 50: Delete

Justification

The aviation industry has been one of the most affected sectors by the COVID-19 pandemic. Time should therefore be given to allow the industry to recover before the imposition of taxes.

(v) Paragraph 65: Agreed to

(vi) Paragraph 67: Agreed to

(vii) Paragraph 104: Agreed to

(viii) Paragraph 107: Delete

Justification

Was introduced in the Finance Act, 2019 and should therefore be given time to be fully operationalized.

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(b) Zero rate

Justification

This is to enable the local manufacturer to claim input tax hence make the seeds cheaper.

(c) Agreed to

(d) Delete

Justification

The aviation industry has been one of the most affected sectors by the COVID-19 pandemic. Time should therefore be given to allow the industry to recover before the imposition of taxes.

Clause 12

(a) Paragraph 13: Delete

Justification

Will increase the cost of LPG and is also against the Government's policy which seeks to encourage afforestation and environmental conservation.

(b) Paragraph 18: Delete

Justification

To encourage local manufacturing especially now that the industry has been affected by the COVID-19 pandemic.

EXCISE DUTY ACT

Clause 13: Agreed to

Clause 14

(a) Amend by deleting "8%" and replace with "6%"

Justification

This is to raise more tax revenue.

(b) Amend by deleting "8%" and replacing with "6%"

Justification

This is to raise more tax revenue.

TAX PROCEDURES ACT

Clause 15: Agreed to

Clause 16: Agreed to

MISCELLANEOUS FEES AND LEVIES ACT

Clause 17: Agreed to

Clause 18: Agreed to

Clause 19

(a) in Part A by-

(i) Paragraph (xv): Delete

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Justification

The aviation industry has been one of the most affected sectors by the COVID-19 pandemic. Time should therefore be given to allow the industry to recover before the imposition of taxes.

(ii) Paragraph (xxii): Agreed to

(iii) Paragraph (xxiii): Agreed to

(iv) Paragraph (xxiv): Amend by deleting the words “*all goods, including materials supplies*”.

Justification

This is to prevent abuse of the exemption by ensuring that only items for official use are exempted.

(b) in Part B by-

(i) Paragraph (vi): Agreed to

(ii) Paragraph (vii)

(vii) Delete

Justification

It will be unfavorable to local currency manufacturers.

(ix) Amend by deleting the words “all goods, including materials supplies”.

Justification

This is to prevent abuse of the exemption by ensuring that only items for official use are imported.

TAX APPEALS TRIBUNAL ACT

Clause 20: Agreed to

MIN.NO.NA/F&NP/2020/158: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 5.33p.m. The next meeting will be held on Thursday, 11th June, 2020 at 10.00am.

HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)

SIGNED..........DATE.....18/6/2020.....

MINUTES OF THE 34TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 11TH JUNE, 2020 IN 5TH FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10.00 AM

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PRESENT

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, MP
5. Hon. Shakeel Shabbir Ahmed, CBS, MP
6. Hon. Abdul Rahim Dawood, MP
7. Hon. David M. Mboni, MP
8. Hon. Francis K. Kimani, MP
9. Hon. Joseph M. Oyula, MP
10. Hon. Joshua C. Kandie, MP
11. Hon. Lydia Mizighi, MP
12. Hon. Mohamed A. Mohamed, MP
13. Hon. Purity Ngirici, MP
14. Hon. Samuel Atandi, MP
15. Hon. Stanley M. Muthama, MP
16. Hon. Edith Nyenze, MP

ABSENT WITH APOLOGY

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Daniel E. Nanok, MP
3. Hon. Andrew A. Okuome, MP

INATTENDANCE

SECRETARIAT

1. Ms. Leah Mwaura - Senior Clerk Assistant/Head of the Secretariat
2. Ms. Jennifer Ndeto - Principal Legal Counsel I
3. Ms. Laureen Wesonga - Clerk Assistant II
4. Mr. Josephat Motonu - Fiscal Analyst I
5. Mr. John Njoro - Serjeant-At-Arms
6. Ms. Euridice Nzioka - Audio Officer

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Clause by clause consideration of the Finance Bill, 2020**
6. Adjournment/Date of the next meeting

MIN.NO.NA/F&NP/2020/159: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 10.29am and a prayer was said. The Chairperson then welcomed the Legal Counsel to take the Committee through clause by clause consideration of the Finance Bill, 2020.

MIN.NO.NA/F&NP/2020/160: CONFIRMATION OF MINUTES

Agenda deferred

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MIN.NO.NA/F&NP/2020/161: **CLAUSE BY CLAUSE CONSIDERATION OF THE
FINANCE BILL, 2020**

The Committee considered the Bill clause by clause and agreed as follows:-

MISCELLANEOUS

Clause 27: Agreed to

Clause 28: Agreed to

Clause 29: Agreed to

Clause 30: Delete

Justification

The definition was introduced in the Finance Act, 2019 and should therefore be given sufficient time to be fully operationalized.

Clause 32: Agreed to

Clause 33: Agreed to

Clause 34: Amend by aligning it to the Public Authorities Limitations Act (Cap 39)

Justification

To ensure that the amendment does not limit access to justice by the taxpayers against the Authority.

Clause 35: Agreed to

Clause 36: Agreed to

ADDITIONAL AMENDMENTS

1. Hon. John Mbadi, MP

He proposed that taxable goods imported or purchased for direct and exclusive use in the implementation of official aid funded projects upon approval by the Cabinet Secretary responsible for the National Treasury should be zero rated. The Committee rejected the proposal because suppliers of official aid funded projects also supply goods to other projects as well as to other customers and this creates an avenue for manipulating the VAT refund claims.

2. Hon. Moses Kuria, MP

- i. The proposal to exempt insurance agency, insurance brokerage and securities brokerage services from VAT was rejected by the Committee because the services were made vatiable in order to reduce tax expenditures while restricting the exemption to only essential services. The removal of these exemptions was to expand the tax base, create equity and fairness in the taxation system.
- ii. The proposal to exempt non-resident persons whose entire income is tax under the withholding tax regime and non-resident persons opening bank accounts for purposes of transacting marketable securities listed in the NSE from the requirement for a PIN was rejected because granting general exemption for specific category of taxpayers may create a loophole for tax evasion.

- iii. The proposal that the Commissioner shall refrain from assessing or recovering taxes, penalties or interest for a company that lists on the growth segment of the securities exchange in Kenya in respect of any year of income prior to the date of listing was rejected because the reason for not allowing amnesty on principal tax is to ensure that there is a level playing field for all companies listing in any of the four segments of the securities exchange. Allowing an amnesty without specifying the timeline will lead to loss of revenue.
- iv. The proposal providing that an intermediary may receive premiums through electronic platforms was rejected because it contradicts the spirit of the policy as contained in the law which is aimed at ensuring that insurers assume risk only upon receipt of insurance premiums. The requirement ensures that the policyholder has a valid cover in the event that the insured risk occurs.
- v. The proposal to exempt “Marketable Securities” from Stamp Duty was rejected because the term “marketable securities” is very wide and therefore the exemption could lead to a huge revenue loss.

3. The Committee considered additional amendments proposed by other stakeholders and adopted the following proposal:-

- i. The proposal by Kenya Bankers Association to amend Paragraph 3(2) of the Eighth Schedule to the Income Tax Act as follows, “(2) *The gain accruing to a company on any transfer of machinery classified in paragraph 1(b) of the Second Schedule is not chargeable to tax under section 3(2)(f)*”.

Justification

This is to align the provisions of the Eighth Schedule to the new Second Schedule.

- ii. The proposal by KPMG to delete 8309.90.90 aluminum pilfer proof caps with EPE liner under the Second Schedule of the VAT Act.

MIN.NO.NA/F&NP/2020/162: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 2.00p.m. The next meeting will be held on notice.

**HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)**

SIGNED..........DATE.....18/6/2020.....

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MINUTES OF THE 35TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON MONDAY, 15TH JUNE, 2020 IN 2ND FLOOR, CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 12.30 PM

PRESENT PDF Compressor Free Version

1. Hon. Joseph K. Limo, MP - Chairperson
2. Hon. Isaac W. Ndirangu, MP - Vice Chairperson
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Shakeel Shabbir Ahmed, CBS, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. David M. Mboni, MP
8. Hon. Francis K. Kimani, MP
9. Hon. Joshua C. Kandie, MP
10. Hon. Purity Ngirici, MP
11. Hon. Samuel Atandi, MP
12. Hon. Stanley M. Muthama, MP
13. Hon. Edith Nyenze, MP

ABSENT WITH APOLOGY

1. Hon. Christopher Omulele, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Daniel E. Nanok, MP
4. Hon. Joseph M. Oyula, MP
5. Hon. Lydiah Mizighi, MP
6. Hon. Mohamed A. Mohamed, MP

INATTENDANCE

SECRETARIAT

1. Mr. Robert Nyaga - Deputy Director, PBO
2. Ms. Leah Mwaura - Senior Clerk Assistant/Head of the Secretariat
3. Ms. Jennifer Ndeto - Principal Legal Counsel I
4. Ms. Laureen Wesonga - Clerk Assistant II
5. Mr. Josephat Motonu - Fiscal Analyst I
6. Mr. John Njoro - Serjeant-At-Arms
7. Ms. Euridice Nzioka - Audio Officer

AGENDA

1. Prayers
2. Communication from the Chairperson
3. Confirmation of Minutes
4. Matters Arising
5. **Adoption of the report on the consideration of the Finance Bill, 2020**
6. Adjournment/Date of the next meeting

MIN.NO.NA/F&NP/2020/163: COMMUNICATION FROM THE CHAIRPERSON

The meeting was called to order at 12.35pm and a prayer was said. The Chairperson then welcomed the Legal Counsel to take the Committee through proposed Committee Stage Amendments of the Finance Bill, 2020.

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MIN.NO.NA/F&NP/2020/164: CONFIRMATION OF MINUTES
Agenda deferred

MIN.NO.NA/F&NP/2020/165: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE FINANCE BILL, 2020

The Committee adopted the report on the consideration of the Finance Bill, 2020 having been proposed and seconded by Hon. Francis Kimani, MP and Hon. Edith Nyenze, MP respectively. The Committee agreed on the following amendments to be considered during the Committee Stage:-

CLAUSE 1

THAT, the Bill be amended in clause 1 —

- (a) by inserting the expression “13A,” immediately after the expression “9,” in paragraph (a);
- (b) by inserting the following new paragraph immediately after paragraph (a) —
 - (ab) section 11 (a) (i) and (iv), 11(d), 19 (a) (i) and 12 (a) on 1st July, 2021;

Justification

To provide that the specified clauses shall commence on 1st January, 2021 and 1st July, 2021, respectively.

CLAUSE 2

THAT, the Bill be amended by deleting the proposed clause 2 and substituting therefor the following new clause –

- “2. Section 6A of the Income tax Act is amended in subsection (1) by deleting-
 - (a) the words “one hundred and forty -four thousand shillings” and substituting therefor the words “two hundred and eighty-eight thousand shillings”; and
 - (b) the word “ten” and substituting therefor the word “fifteen”.

Justifications

This amendment retains the amendment as was contained in the Bill, that is, increasing the upper threshold for income subject to rental income tax from Ksh. 10,000,000 to Ksh. 15,000,000.

The amendment also amend the lower threshold of income subject to rental income tax from Ksh. 144,000 to Ksh. 288,000. This amendment raises the lower threshold to match the lower Pay As You Earn band in accordance with the amendments that were made in the Tax Laws (Amendment) Act, 2020.

CLAUSE 5

THAT, the Bill be amended in clause 5 by deleting paragraph (f).

Justification

The amendment is intended to retain the allowable deduction of expenditure incurred by a person in the construction of a public school, hospital, road or any similar kind of social infrastructure. This is to encourage companies to invest in corporate social projects.

CLAUSE 8

THAT, the Bill be amended in clause 8–

- (a) by deleting paragraph (b) ;

Justification

The Bill proposed to remove the exemption from income tax that was available for income of the National Social Security Fund. The amendment is intended to retain the exemption for income of the National Social Security Fund. The deletion of the amendment is intended to protect the benefits of the members of the NSSF.

- (b) by deleting paragraph (c) and substituting therefor the following new paragraph-
“(c) by deleting the both paragraphs 53;”

Justification

The Income Tax Act currently contains two paragraphs 53. One paragraph 53 (Monthly pension granted to a person who is sixty-five years of age or more) was made in the Finance Act, 2007. Thereafter in the Finance Act, 2016 another amendment was made inserting another paragraph 53 (Income from employment paid in the form of bonuses, overtime and retirement benefits)

- (c) by inserting the following new paragraph immediately after paragraph (c) –
“(d) by inserting the following new paragraph immediately after paragraph 52-
53. Monthly pension granted to a person who is sixty-five years of age or more.”

Justification

The amendment is intended to correct the error and to retain the exemption from Income Tax the monthly pension granted retirees.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 9-

- 9A.** The Eight Schedule to the Income Tax Act is amended in paragraph 3 by deleting sub-paragraph (2) and substituting therefor the following sub-paragraph-
(2) The gain accruing to a company on any transfer of machinery classified in paragraph 1 (b) of the Second Schedule is not chargeable to tax under section 3(2) (f).

Justification

The amendment is to align the cross reference in the Eight Schedule to the amendments that were made to the Second Schedule in the Tax Laws (Amendment) Act, 2020.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 10-

- 10A.** Section 68 of the Value Added Tax Act, 2013, is amended by inserting the following new sub-section immediately after subsection (2) —
(2A) Notwithstanding the repeal of paragraph 102 of the First Schedule, the exemption of goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangement with the Government, shall continue for existing projects for the remaining period of the agreement.

Justification

The amendment is intended to save the VAT exemption under paragraph 102 that was available for existing projects under the special operating framework arrangement with the Government. Paragraph 102 was deleted in the Tax Laws (Amendment) Act, 2020.

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CLAUSE 11

THAT, the Bill be amended in clause 11 —

(a) in paragraph (a) by —

(i) inserting the following sub-paragraph immediately after sub-paragraph (i)—

“(ia) deleting tariff numbers 8309.90.90 and its corresponding description appearing in paragraph 39 (3)”;

Justification

The amendment is to remove the exemption of aluminium pilfer proof caps under tariff 8309.90.90. The exemption for these products is no longer relevant for the stakeholders.

(ii) deleting paragraph (viii).

Justification

The amendment in the Bill sort to delete the exemption that was available for machinery and equipment in the construction of plastic recycling plants.

This amendment seeks to restore the that was intended to encourage investment in plastic recycling plants and was only inserted in 2019. It has not been in place long enough to allow for investment in plastic recycling.

(iii) inserting the following new paragraph immediately after paragraph (viii)—

(ix) deleting paragraph 108;

Justification

The supply of maize flour under paragraph 108 was under exempt and has been moved to the second schedule on zero rated items. It is intended to make flour cheaper and affordable.

CLAUSE 12

THAT, the Bill be amended in clause 12 by inserting the following paragraph immediately after paragraph (c) —

(d) 20. The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight.

Justification

The amendment is to zero rate the supply of flour. It is intended to make flour cheaper and affordable.

NEW CLAUSE

THAT, the Bill be amended by inserting the following new clause immediately after clause 13-

13A. The Excise Duty Act, 2015 is amended by deleting section 10 and substituting therefor the following new section-

10. (1) Despite section 8, the Commissioner shall, with the approval of the Cabinet Secretary, by notice in the *Gazette*, adjust the specific rate of excise duty once every year to take into account inflation in accordance with the formula specified in Part 1 of the First Schedule.

(2) The notice under subsection (1) shall be laid before the National Assembly within seven days from the date of publication.

(3) The National Assembly shall, within twenty-eight sitting days of the receipt of the notice under sub-section (2), consider the notice and make a resolution either to approve or reject the notice.

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(4) The notice shall have effect, if a resolution disapproving the notice is passed by the National Assembly.

Justification

The amendment is to provide that the Commissioner should seek approval of the Cabinet Secretary before making inflation adjustment. Further, it is to require that the Gazette notice be laid before the National Assembly. The National Assembly should have power to check the powers it has donated to the Commissioner to make inflation adjustments and, may or may not approve the adjustment.

CLAUSE 14

THAT, the Bill be amended by deleting clause 14 and substituting therefor the following new clause-

14. The First Schedule to the Excise Duty Act, 2015 is amended -

(a) in paragraph 1 of Part 1 by-

(i) deleting the expression “10%” appearing in the description “Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic and spirituous beverages of alcoholic strength not exceeding 10%” and substituting therefor the expression “6%”;

Justification

The amendment is to reset the threshold of alcoholic beverages subject to Excise Duty from “8%” to “6%”. The amendment will enhance revenue collection.

(ii) by deleting the expression “10%” appearing in the second column against the description “Spirits of undenatured ethyl alcohol; spirits beverages of alcoholic strength exceeding 10%” and substituting therefor the expression “8%”;

Justification

The amendment is to reset the threshold of spirit beverages subject to Excise Duty from “8%” to “6%”. The amendment will enhance revenue collection.

(b) by deleting paragraph 5 in Part 1.

Justification

The amendment is to remove excise duty on betting. This is to reverse the negative effects of this tax on the industry, which has led to closure of betting companies in Kenya, yet international players continue to operate.

CLAUSE 19

THAT, the Bill be amended in clause 19 –

(a) in paragraph (a) (iv) by deleting the words, “all goods, including materials supplies” appearing in the proposed new paragraph (xxv);

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Justification

The amendment is to provide that the exemption from Import Declaration Fee is only available specifically to equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and the National Police. The use of the words “all goods” may lead to abuse of the exemption

- (b) in paragraph (b) (ii) by deleting the words, “all goods, including materials supplies” appearing in the proposed new paragraph (ix);

Justification

The amendment is to provide that the exemption from the Railway Development Levy is only available specifically to equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and the National Police. The use of the words “all goods” may lead to abuse of the exemption.

CLAUSE 21

THAT, the Bill be amended in clause 21 by deleting paragraph (a) and substituting therefore the following new paragraph—

- (a) by deleting the definition of the term “toll collector” and substituting therefore the following new definition—

“toll collector” means a public toll collector appointed under section 4 or a private toll collector appointed under section 4B.

Justification

The amendment seeks to recognize the two categories of toll collectors provided for in the Act in the definition of the term “toll collector” i.e. public toll collector under section 4 and private toll collector under section 4B.

CLAUSE 22

THAT, the Bill be amended in clause 22 by –

- (a) inserting the following paragraph immediately before paragraph (a)–

“(a) by inserting the following sub-section immediately after sub-section (1)–

(1A) Notwithstanding subsection (1), a private toll collector shall only levy toll and collect monies payable on a public toll road constructed under an agreement entered into under section 4A.

- (b) by renumbering the existing paragraphs as (b) and (c).”

Justification

The amendment is to provide specifically that private toll collectors may only collect from roads constructed under Public Private arrangements, and to avoid instances of toll collection on roads constructed using public funds.

CLAUSE 25

THAT, clause 25 of the Bill be amended in the proposed new section 6A by—

- (a) inserting the words “except transit tolls” immediately after the word “tolls” appearing in subsection (2); and

- (b) inserting the following new subsection immediately after subsection (2)–

(2A) The purpose of the Fund shall be to provide funds for the —

- (a) proper functioning of toll roads and toll stations; and

(b) development, repair or maintenance of roads as the Minister may direct.

Justification

The amendment seeks to ensure that the resources of funds for the Public Roads Toll Fund do not include monies from transit tolls. Further, the amendment seeks to provide for the purposes of the Fund.

CLAUSE 26

THAT, clause 26 of the Bill be amended by –

- (a) renumbering the proposed amendment to subsection (2) as paragraph (b); and
- (b) inserting the following new paragraph immediately before the renumbered paragraph (b)-

(a) by deleting the words “shall be guilty of an offence and liable to a fine not exceeding five thousand” appearing in the proviso to subsection (1) and substituting therefor the words “shall upon conviction, be liable to a fine not exceeding fifty thousand”.

Justification

The amendment seeks to enhance the penalty for failure or fraudulently passing through a toll station without paying or failure to use the designated route for passage through a toll station.

CLAUSE 30

THAT, the Bill be amended by deleting clause 30.

Justification

The amendment is to delete the proposed new definition of the term “consolidators” which sort expand the definition to include specific importers. The amendment is to retain the definition that was made in the Finance Act, 2019. This will ensure that consolidators are well regulated as they will be responsible for the consolidated cargo.

CLAUSE 31

THAT, clause 31 of the Bill be deleted.

Justification

The amendment seeks to ensure that transit tolls levied under the Public Roads Toll Act are remitted to the Road Maintenance Levy Fund as currently provided for in the Act and not to the Public Roads Toll Fund proposed to be established.

CLAUSE 33

THAT, the Bill be amended by deleting the proposed amendment in clause 33 and substituting therefor the following new clause-

“Section 16 of the Kenya Revenue Authority Act, 1995 is amended-

- (a) in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph-
 - “(a) at least two percent of the revenue actually collected by the Authority in the previous financial year;
- (b) in subsection (1) by inserting the following new paragraph immediately after paragraph (b)-

- (ba) any commission received by the Authority for collecting any revenue on behalf of a county government or government agency;”
- (c) by inserting the following subsection immediately after subsection (1)-
 - (1A) Subject to subsection (1) (ba), the commission received by the Authority shall not exceed two percent of the total revenue collected on behalf of the county government or government agency.

Justifications

The amendment is to ensure that the Kenya Revenue Authority is allocated a minimum of 2% of the revenue collected in the previous financial year.

The amendment also provides that the Kenya Revenue Authority may receive a commission of not more than 2% of the revenue collected on behalf of a county government and that this should form part of the funds of the Authority.

CLAUSE 34

THAT, the Bill be amended in clause 34 in the proposed new section 20A (a) by deleting the words “twelve months” and substituting therefor the words “three years”.

Justification

The amendment is to provide that the limitation of time for matters against the Kenya Revenue Authority is three years. This is to comply with different decisions of the Courts that have held that the Public Authority Limitation of Action Act cannot apply to the Kenya Revenue Authority.

CLAUSE 37

Amend the clause by deleting the word “*registered*” appearing in the proposed new item (h) and substituting therefor the word “*licensed*”.

Justifications

The amendment seeks to ensure that the proposed protection of tax revenue held on behalf of the Kenya Revenue Authority by commercial banks and financial institutions during insolvency is effective by aligning the amendment to the language used in the Banking Act.

Section 4 of the Banking Act provides for the “licensing” of persons and not “registration” as used in the proposed amendment to the Insolvency Act. The amendment is necessary in order to give effect to the purpose of the amendment of the Insolvency Act, 2015, as stated in the Memorandum of Objects and Reasons for the Bill.

MIN.NO.NA/F&NP/2020/166: ADJOURNMENT/DATE OF NEXT MEETING

There being no other business to deliberate on, the meeting was adjourned at 2.45p.m. The next meeting will be held on notice.

HON. JOSEPH K. LIMO, MP
(CHAIRPERSON)

SIGNED..........DATE.....18/6/2020.....

FINANCE

FAULU MICROFINANCE BANK LIMITED

CHANGE OF CHAIRMANSHIP

The Board of Directors of Faulu Microfinance Bank Limited hereby announce the retirement of Dr. Peter Wanyaga Muthoka EBS, MBS, FKIM, FKIB, MID as Chairman and Director of Faulu Microfinance Bank with effect from 31st March 2020 after a successful and dedicated six (6) years of service on the Board.

The Board of Directors, Management and Staff of Faulu take this opportunity to acknowledge and extend their sincere gratitude and appreciation to Dr. Peter Wanyaga Muthoka for his transformational leadership, selfless devotion and sound counsel over the period. We wish him the best in his future endeavours.

Faulu Microfinance Bank Limited is the leading Microfinance Bank in Kenya and is regulated by the Central Bank of Kenya.

He has been succeeded by Mr. George A. Maina who is a Director of Faulu Microfinance Bank Limited, Chair of Risk and Compliance Committee, Chair of Technology and Innovations Committee and member of the Governance, Remuneration and Nominations Committee.

He has over 30 years leadership and business experience having served in major multinational businesses locally and internationally.

He is a member of the Institute of Directors.

BY ORDER OF THE BOARD

NKIROTE MWORIA-NJIURU
COMPANY SECRETARY

8TH MAY 2020



DR. PETER WANYAGA MUTHOKA
EBS, MBS, FKIM, FKIB, MID



MR. GEORGE A. MAINA



A MEMBER OF THE CREDIT GROUP

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - FOURTH SESSION

In the Matter of consideration of by the National Assembly of the National Government Estimates of Revenue and Expenditure for Financial Year 2020/2021 (Articles 127(6)(c) and 221(1) of the Constitution)

SUBMISSION OF MEMORANDA

In line with Article 221(1) of the Constitution, the Estimates for National Government, Judiciary and Parliament were submitted to the National Assembly for consideration and subsequently committed to the Budget and Appropriations Committee. Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees".

Pursuant to the provision of Articles 118(1)(b) and 221(4) & (5) of the Constitution, the Budget and Appropriations Committee now invites interested members of the public to submit any representations that they may have on the Estimates of Revenue and Expenditure for the financial year 2020/2021. In addition, the Committee is also seeking views on key areas of expenditure priorities from the following counties: Tana River, Garissa, Kitui, Muranga, Turkana, Samburu, Kericho, Narok, Busia, Homabay, Kisii and Kwale.

In view of the current Covid-19 pandemic, the Committee is seeking views of the public and other stakeholders through written submissions/memoranda in the following manner:-

- Written memoranda may be forwarded to the Clerk of National Assembly, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk, Main Parliament Building, Nairobi or emailed to clerk@parliament.go.ke, pbo@parliament.go.ke to be received on or before Friday, 15th May, 2020.
- Written memoranda should clearly indicate: name of the person/organization, County, Constituency, Ward and contact details.

The Estimates of Revenue and Expenditure for the financial year 2020/21 are available in the Office of the Clerk of the National Assembly, First Floor Parliament Building and have also been published on the Parliamentary Website (<http://parliament.go.ke/index.php/the-national-assembly/committees/12/budget-an-appropriations-committee>).

MICHAEL R SIALAI, EBS

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY TWELFTH PARLIAMENT - FOURTH SESSION

In the matter of consideration by the National Assembly:-
The Finance Bill (National Assembly Bill No. 10 of 2020)

SUBMISSION OF MEMORANDA

Article 118(1)(b) of the Constitution provides that, "Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees". The National Assembly Standing Order 127(3) provides that, "the Departmental Committee to which a Bill is committed shall facilitate public order and take into account the views and recommendations of the public when the Committee makes its report to the House".

The Finance Bill (National Assembly Bill No. 10 of 2020) was submitted by the Cabinet Secretary for National Treasury and Planning and formulates the proposals announced in the Budget for FY 2020/21 relating to liability to and collection of taxes and for matters incidental thereto. The Bill proposes to amend the following laws:-

The Income Tax Act, Cap. 470

The Bill proposes to amend section 6A of the Act by increasing the higher threshold for residential income subject to tax from ten million (10,000,000) to fifteen million (15,000,000). This means that it is proposed to tax rental income of between one hundred and forty thousand and fifteen million. The Bill also seeks to amend section 12A; the provision on imposition of instalment tax. It provides for an additional exemption where instalment tax is not payable, that is, if the minimum tax payable under the new section 12D is higher than the instalment tax. The Bill proposes to insert section 12D; a provision establishing a tax to be known as minimum tax. Additionally, the insertion of section 12E is establishing a new tax to be known as digital service tax.

The Value Added Tax Act, No. 35 of 2013

The Bill seeks to amend section 17 of the Act which provides for credit for input tax against output tax. The amendment provides that input tax deduction shall not be allowable, if the registered supplier has not declared the sales invoice in a return. This is in addition to the provisions of paragraph(a) which was already contained in the Act. The Bill also seeks to amend the First Schedule to exempt maize (corn) seeds.

The Excise Duty Act No. 23 of 2015

The Bill seeks to amend section 17 of the Act to include the definition of the term "licence" to include a licence in the case of any activity under section 15(1)(a) of the Act.

The Tax Procedures Act, 2015 No. 29 of 2015

The Bill is proposing to insert a new section 37D in the Act which is establishing the Voluntary Disclosure Programme for a period of three years from 1st January 2021. The Bill is also proposing to insert a new section 42B in the Act to give the Commissioner power to appoint agents for collection of the Digital Service Tax, which has been proposed to be established under section 12D of the Income Tax Act.

The Miscellaneous Fees and Levies Act No. 29 of 2016

The Bill seeks to amend section 7 of the Act to provide that the Import Declaration Fee be levied at the rate of one point five percent on goods imported under the East African Community Duty Remission Scheme. The Bill is inserting a new section 9A which provides for additional duty at the rate of two point five percent in addition to import duties payable under section 110 of the East African Customs Management Act in respect of goods entered for home use from an Export Processing Zone enterprise.

The Tax Appeals Tribunal Act, 2013 No. 40 of 2013

The Bill proposes to amend section 13 of the Act, to provide that the orders of the Tax Appeals Tribunal shall be limited to the grounds stated in the appeal or documents.

The Roads Tolls Act (Cap. 407)

The Bill proposes to amend the Act to enable the persons, who enter into agreement with the Cabinet Secretary responsible for roads, to collect road tolls on roads constructed and managed under such agreements. The amendment also proposes creation of a Fund by the Cabinet Secretary for the National Treasury in which the funds collected shall be deposited.

The Capital Markets Act (Cap. 495A)

The Bill seeks to amend section 11(3) of the Act to bring private equity and venture capital firms that access public funds (pensions scheme funds) under the regulatory oversight of the Capital Markets Authority in line with the Cabinet Secretary's policy pronouncement and intention in the financial year 2015/16 budget speech. The Bill further seeks to amend section 18 of the Act to remove the function of payment of beneficiaries from collected unclaimed dividends when they resurface since this is a function currently domiciled under the Unclaimed Financial Assets Authority.

The Insurance Act (Cap. 487)

The Bill seeks to amend section 204A(3) of the insurance Act to specify the period within which an appeal against the decision of the Commissioner of Insurance by an aggrieved party can be filed in the Tribunal.

The Standards Act (Cap. 496)

The Bill proposes to amend the definition of "consolidator" in section 2 of the Act to facilitate visibility of individual consignees for the purpose of customs declaration.

The Kenya Revenue Authority Act (No. 2 of 1995)

The Bill seeks to amend the Act to provide for a legal framework for the establishment of an institution to offer capacity building and training on tax, customs and revenue administration. The Bill further proposes to amend the Act to include commissions earned by the Kenya Revenue Authority on collections made on behalf of government agencies or county governments as a source of funding for the Authority capped at 2% of the revenue collected. The Bill also seeks to amend the Act by providing for specific timelines within which the Authority can be used to enable the Authority to effectively manage its disputes.

The Retirement Benefits Act, 1997 (No. 3 of 1997)

The Bill seeks to amend the Retirement Benefits Act, 1997 to enhance supervisory role of the Authority on pension schemes by providing powers to charge a penalty for failure to submit actuarial valuation reports within the period specified in the Regulations.

The Insolvency Act (No. 18 of 2015)

The Bill proposes to amend the Second Schedule to the Act to reduce the risk exposure on the tax revenues held by commercial banks before transfer to Central Bank by declaring them preferential claims in the order of priority in the event of insolvency.

The Finance Bill (National Assembly Bill No. 10 of 2020) has undergone First Reading pursuant to Standing Order 127(3) and stand committed to the Departmental Committee on Finance & National Planning for consideration and thereafter report to the House.

Pursuant to Article 118(1)(b) of the Constitution and Standing Order 127(3), the Committee invites interested members of the public and organizations to submit any representations they may have on the said Bill. The Bill can be accessed from the parliamentary website at: www.parliament.go.ke/the-national-assembly/house-business/bills.

The representations or written submissions may be forwarded to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi, hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to clerk@parliament.go.ke; to be received on or before Thursday, 21st May, 2020 at 5.00 pm.

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