REPUBLIC OF KENYA

NATIONAL ASSEMBLY
EIGHTH PARLIAMENT – SIXTH SESSION

REPORT

OF THE

DEPARTMENTAL COMMITTEE

ON

FINANCE, PLANNING & TRADE

ON

FINANCE BILL, 2002

OCTOBER, 2002

1. INTRODUCTION

Mr. Speaker Sir, on behalf of the Members of the Departmental Committee no. F on Finance, Planning and Trade and pursuant to the provisions of Standing Order N. 101 (3), I would like to take this opportunity to present to the House, the Report and recommendations of the Committee on the Finance Bill, 2002.

The functions of the Departmental Committee as established under Standing Order No. 151 are *inter alia*:-

(i) ***to study and review all legislation after First Reading subject to the exemptions under Standing Order No. 101 A (4)***

(ii) ***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 or a Minster.***

(iii) ***to make reports and recommendations to the House as often as possible including recommendations of proposed legislation.***

The Finance Bill, 2002 was referred to the Departmental Committee on Finance, Planning and Trade on 3rd July, 2002 upon a motion moved by the Minister for Finance pursuant to the provisions of Standing Order No. 101(1).

The Minister for Finance accompanied by Commissioner General and senior officials from both Treasury and Kenya Revenue Authority; Minister for Information and Tourism accompanied by the management of Catering Levy Trustee; Minister for Trade and Industry accompanied by the management of Kenya Bureau of Standards and the stakeholders in the motor industry attended the Sittings of the Committee and discussed various aspect of the Bill in detail. The Committee held a total of six sittings.

2. COMMENTS BY THE MINISTER FOR FINANCE

The Committee deliberated on the Finance Bill, 2002 and was informed by the Minister for Finance as follows:-

PART 11- CUSTOMS AND EXCISE

Clause 2 - **Amendments of sections 2(1) and 1(2)**
The amendments have the following effects:

(i) The introduction of the word "services" in the definition of "duty" to include any tax charged on goods and services under the Act.

(ii) Defining the 'point of sale" in calculating the value of goods for exercise purposes to be the point where goods exchange ownership in an open market transaction.

(iii) The introduction of surcharge on used motor vehicles is expected to make the importation of the said vehicles expensive hence discourage the same.

Clause 3 - **Amendment of section 22(1)**
The amendment proposes to make transit shed operators responsible for duty payable on goods, which they have taken custody of.

Clause 4 - **Amendment of section 73(3)**
The amendment is a clean up exercise to remove the expression KP&TC, which does not exist in law and replace the same with Postal Corporation of Kenya.

Clause 5 - **Amendment of section 117(1)**
The amendment introduces the word "services" and brings Excise Duty chargeable on airtime within the law.

Clause 6 - **Amendment of section 119(1)**
The amendment empowers the Minister to vary the rates of duty up to 100% thereby enabling the Minister to respond more effectively to protect the farmers and local industry when need arises.

Clause 7 - **Amendment of section 125(1)**
The amendment increases the membership of the Ant-Dumping Advisory Committee to include the private sector thereby having a wider representation.

Clause 8 - **Amendment of section 127C(3)**
The amendment discourages organizations from forming associate companies and making transfer pricing to evade taxation hence enables equitable assessment of taxes.

Clause 9 - **Insertion of section 127G**
The amendment introduces a new section that provides guidelines on how services will be valued for the purpose of Excise Duty.

Clause 10 - **Amendment of section 128**
The amendment provides that "one hundred" shillings be the minimum duty collectible as below that amount is uneconomical to collect.

Clause 11- **Amendment of section 137(1)**
The effect of the amendment is that Excise Duty on the usage of cellular mobile phone services will be charged on airtime whenever the subscriber uses it.

Clause 12 - **Amendment of section 138(2)**
The amendment empowers the Minister for Finance to grant exemption in respect of an official aid funded projects.

Clause 13 - **Amendment of section 141(2)**
The amendment introduces Tax Remission Office with strict regulations in place of Export Promotion Programme Office (EPPO).

Clause 14- **Amendment of section 177(1)**
The purpose of the amendment is to introduce electronic data storage media among the documents the Commissioner can call for and to allow the Commissioner to access the same for audit purposes.

Clause 15 - **Amendment of section 194(1)**
The amendment commits the directors or other officers of the company to be liable for an offence committed by a corporate body.

Clause 16 - **Amendment of section 194 A(2)**
The amendment provides for both fine and imprisonment for the adulteration of petroleum products.

Clause 17 - **Replacement of the First Schedule**
The amendment accommodates changes in the International Harmonized Commodity Coding and Description System.

Clause 18 - **Amendment of the Third Schedule**
The schedule contains details of persons who may import goods free of import duty and classes of the goods.

All raw materials including the clinker should be zero-rated for purposes of duty.

Clause 19 - **Insertion of a new Fourth Schedule**
The new Schedule provides for a rate of 20% export duty on raw hides/skins and scrap metals for steel so as to encourage local dealers of these products to sell to the local industry for value addition.

Clause 20 - **Insertion of a new Fifth Schedule**
The new Excise Duty Schedule introduces an additional 10% excise duty on motor vehicles and 5% excise duty on mobile cellular phone service.

Clause 21 - **Amendment of the Seventh Schedule**
The amendment adds part two to the existing seventh schedule. Part two defines value on which excise duty is to be charged on locally manufactured excisable goods and also gives guidelines on how value of excisable goods is to be assessed.

Clause 22 - **Amendment to the Eighth Schedule**
The amendment contains details of goods whose importation is either restricted or prohibited.

PART III - VALUE ADDED TAX (VAT)

Clause 23 - **Amendment of section 2(1)**

The amendment expands the coverage to include other duties which were not explicitly mentioned in the VAT Act thereby restricting taxable goods.

The amendment also expands the definition of "hotel" to ensure that restaurant and accommodation services by any name are covered within the definition.

Clause 24 - **Amendments of section 9(1), 9(6B) and 9(6A)**

The amendments seeks to:

(i) Clarify the meaning of the expression "a person independent of a registered person".

(ii) Amend subsection 6(B) to make the taxable value for gaming and betting services inclusive of VAT.

(iii) Introduce a new subsection 6A to define the taxable value for airtime for mobile cellular phone services in view of the new 5% Excise Duty.

Clause 25 -**Amendments of sections 11(1), 11(1A), 11(1B) and 11(1C)**

The amendments seeks to increase the period from 6-12 months for input tax deductions and to exclude "proof of payment" as a requirement for input tax.

Clause 26 - **Amendment of section 13(1A)**

The amendment introduces a new tax point for imported services.

Clause 27 - **Amendments of sections 23(1) and 23(3)**

The amendments seeks to:

(i) Empower the Minister for Finance to remit tax on imported taxable goods and services.

(ii) Remove remission of tax on imports for official aid funded projects.

(iii) Limit the remission of tax to donations for the poor and destitute persons.

(iv) Remove remission of VAT on goods imported under bond for manufacture of exports.

(v) Empowers the Minister to grant remission of tax on donation by private sector or on capital goods imported for use in the exploration of Geothermal Energy.

Clause 28 - **Amendment of section 24(A)**
The amendment introduces a new proviso to restrict the period for refund of tax paid on bad debts to five years.

Clause 29 - **Amendment of section 30(1)**
The amendment seeks to empower the Commissioner General to obtain information from taxpayers for any other purposes other than for tax liability.

Clause 30 - **Amendment to section 41(2)**
The amendment commits directors and senior officers of companies liable for the offenses committed by their companies even if such companies have closed down.

Clause 31 – **Replacement of the Second Schedule**
The amendment replaces the Schedule of exempt goods because of the changes in the custom coding and description system.

Clause 32 - **Amendment of the Third Schedule**
The amendment clarifies that car park services, conferences and exhibition services are taxable except where such services are provided for in educational institutions.

Clause 33 - **Replacement of the Fourth Schedule**
The amendment seeks to make all taxable goods to be taxable at all levels and to remove the registration turnover limits for all professional services.

Clause 34 - **Amendment of the Fifth Schedule**
The amendment seeks to prevent dumping of goods in the domestic market and to revive the cotton industry.

Clause 35 - **Amendment of the Sixth Schedule**

The amendment seeks to reduce the registration turnover limits from Kshs. 3.6 million to 3 million and to reduce the de-registration turnover limits from Kshs. 3 million to 2 million.

Clause 36 - **Amendment to Eighth Schedule**

The amendment schedule contains a list of persons entitled to zero rated imported goods and classes of goods.

PART IV – INCOME TAX

Clause 37 - **Amendment of sections 2(1) and 2(1A)**

The amendment seeks to expand the definition of:

(i) Management or professional fee to include contractual fees.

(ii) Qualifying assets to include assets prescribed in the investment guidelines.

(iii) Qualified institution to include other financial institutions.

(iv) Re-define "Unit Trust" and Retirement Benefits Authority.

Clause 38 - **Amendments of sections 5(2), 5(3), and 5(4)**

The amendment deals with income from employment. The benefits chargeable is now the higher of 25% of the gains or profits from employment.

Clause 39 - **Amendment of section 8(5)**

The amendment deals with taxation of income from pensions and provide for tax exemption on the first Kshs.360,000 withdrawn from a registered individual retirement fund or scheme.

Clause 40 - **Amendment of section 16(2) and 16(3)**

The effect of the amendment is that it will:

(i) Enable employers to deduct the cost of meals provided to all employees when provided at the employers' premises.

(ii) Define "all loans" for purposes of determining whether a company owned by a non-resident person is capitalized or not.

Clause 41 - **Amendment of section 20**

The amendment introduces new Collective Investment Schemes formed by employers on behalf of employees whereby employees make monthly contributions from taxed emoluments.

Clause 42- **Amendment of section 31**

The amendment re-introduces life insurance relief to resident individuals to enable them enjoy tax relief in respect of life insurance and education policies with a maturity of at least ten years where the policy is on the life of self, wife or child.

Clause 43 - **Amendment of section 35**

The amendment is a tuning up exercise in line with the amended definition of "management or professional fee" and to harmonize tax remission due dates.

Clause 44 - **Amendment of section 52B**

The effect of the amendment is that all employees will now be required to submit income tax returns whether or not they have other sources of income.

Clause 45 - **Amendment of section 56(1)**

The amendment empowers the Commissioner to download electronic data from taxpayers and obtain copies of records.

Clause 46 - **Amendment of section 72(6)**

The amendment seeks to raise the amount the Commissioner may waive or remit from Kshs.100,000 to Kshs.500,000.

Clause 47 - **Amendment of the section 92(2A)**

The amendment seeks to harmonize all installment tax payment due dates.

Clause 48 - **Amendment of the Third Schedule to the Income Tax Act**

The Clause amends the schedule on tax rates by:-

(i) Introducing an insurance relief of 15%.
(ii) Introducing a lower rate of corporation tax of 25%.
(iii) Amending the graduated rates for payment of lump sums or withdraw from registered pension funds.

Clause 49 - **Amendment of the Twelfth Schedule**
The amendment seeks to harmonize the twelfth schedule with section 92(2A) so as to harmonize tax payment due dates.

PART V: MISCELLANEOUS

Clause 50 - **Amendment of section 163A(1) of the Local (Government Act)**
The amendment seeks to make it mandatory for professionals to be cleared by their respective professional bodies prior to issuance of a Single Business Permit.

Clause 51 - **Amendment of section 2 of the Exchequer and Audit Act**
The amendment introduces the definition of Investment Secretary in the Act.

Clause 52 - **Amendment of section 18(1) of the Exchequer and Audit Act**
The amendment seeks to regularize the appointment of the Investment Secretary as the receiver of revenue for statutory bodies under his jurisdiction.

Clause 53 - **Amendment of Part II of the First Schedule to the Kenya Revenue Authority Act**
The amendment seeks to transfer the collection of Catering and Tourism Development Levy (CTDL) to the Kenya Revenue Authority for purposes of efficiency, accountability and low cost of collection of the levy.

Clause 54 - **Amendment of Second Hand Motor Vehicle (Purchases Tax Act)**
The amendment seeks to raise the second hand motor vehicle purchase tax by 15% to keep pace with inflation.

Clause 55 - **Amendment of section 32(1) of the Insurance (Act)**
The amendment seeks to enhance the deposits kept by an underwriter in the Central Bank of Kenya and to protect policyholder's liabilities when the underwriter is unable to meet his obligations.

Clause 56 - **Amendment of section 41(1) of the Insurance Act**
The amendment seeks to enhance the margin of solvency of long term insurance business by requiring them to maintain at all times 5% of the admitted assets or Kshs.1 million, whichever is higher.

Clause 57 - **Amendment of sections 55A(1) and 55 A(3) of (the Building Societies Act)**
The amendment seeks to allow the Building Societies to merge with either a bank, non-bank financial institutions or a non-mortgage finance company given the depressed property market.

Clause 58 - **Amendments of Fourth Schedule of the Hotels and (Restaurant Act)**
The amendment seeks to harmonize the registration requirements of Hotels and Restaurants with the VAT Act as the Commissioner of VAT will collect the Levy.

Clause 59 - **Amendment of sections 15(1) and 15(2) of the Standards Act**
The amendment seeks to enhance the general penalty to Kshs.500,000 so as to deter the proliferation of counterfeit and substandard goods.

Clause 60 - **Insertion of New Section 12A of the Engineers Registration**
The amendment seeks to ensure that only persons registered under the Act are allowed to practice.

Clause 61 - **Amendment of section 21 of the Engineers Registration Act**
The amendment seeks to restrict practicing to only those who have acquired valid annual licence from the Engineers Registration Board.

__Clause 62__ - **Amendment of section 22 of the Engineers (Registration Act)**
The amendment requires an engineer to have a valid annual licence.

__Clause 63__ - **Amendments of section 34 (4A) of the Retirement Benefits Act No. 3 of 1997**
The amendment introduces a fine of Kshs.500,000 or 2 years jail term or both to a trustee who fails to submit audited accounts as prescribed by the Authority so as to enhance compliance.

__Clause 64__ - **Amendment of section 42(3) of the Retirements Benefit Act**
The amendment introduces a penalty to act as a deterrent to giving false information or hindering the work of an inspector appointed by the Authority.

3. COMMMENTS BY THE MINISTER FOR INFORMATION AND TOURISM ON *CLAUSE 53*

The Minister informed the Committee that: -

(i) The CT & TD levy is not a tax but an industry charge/payment specific to the tourism sector's benefits and not revenue to the Exchequer. Therefore, it's only through its collection by CLT that the industry is assured of continued control and use of the fund to the satisfaction of the sector.

(ii) The Minister for Finance proposed a transfer of collection of 2% from CLT to KRA based on the following reasons: -

(a) **Reduction in collection costs**.
Whereas it is claimed that KRA will collect the 2% levy at a cost of 1.5%, it's important to note that this is not in real terms the actual cost of collection to KRA. Since CLT will still remain to perform other functions, KRA will spend more money from the VAT account to sustain the management of the levy collection function and incur about 5 million per month for the operations of CLT.

(b) **<u>Efficiency</u>**

Whereas it's claimed that KRA is more efficient than CLT in revenue collection, there are no set parameters to evaluate the performance of these two institutions to enable reasonable comparison of their performance. KRA should be left to concentrate on improving its tax collection results to desired optimal levels for the benefit of the economy.

(c) **<u>Network Coverage</u>**

Whereas it's claimed that KRA has a wide network coverage, KRA's low data base of 781 paying units compared to CLT's 4400 paying units leaves out 3619 cases from which Kshs.16 million is realized every month.

KRA's current minimum qualification threshold of Kshs. 3.0 million per annum leaves out a lot of levy payers who perform the business of hosting tourists in private homes and lodges in Ranches whose total incomes are below Kshs.3 million.

(d) **<u>Consolidation of revenue</u>**

The argument on the need to consolidate revenue Collection as in other East African Countries or other developed countries should be looked at more critically than at face value.

The Kenyan public is known for their unwillingness to comply fully and truthfully with taxation laws hence experience has shown a lot of under declaration to VAT department.

Therefore, consolidation of revenue in Kenya should only be done when the attitude of the public changes and when KRA's revenue collection on its core business areas reach the desired optimal levels of Kshs.280 billion as compared to the current level of Kshs.190 billion.

(iii) The core function of CLT is levy collection. Therefore, removing that function implies that CLT remains a shell with demoralized staff.

(iv) The total savings in cost reduction through the agency move of Kshs.1.5 million every month is less than the revenue loss of Kshs.15 million every month and thus not beneficial to the Industry.

(v) The move will result into Kenya Utalii College, KTB, and CLT receiving reduced incomes for the performance of their functions.

(vi) After retrenching 60% of the workforce in March 2001,CLT has reduced costs through rationalization and restructuring and has set strategies to further reduce costs while enhancing revenue collection.

4. COMMENTS BY THE KENYA AUTO BAZAAR ASSOCIATION ON *CLAUSE 54*

The management of Kenya Auto Bazaar Association informed the Committee as follows: -

(i) The Association was formed in 1997 to articulate issues pertaining to the second hand Motor vehicles and the Motor Industry in general. To achieve this, the Association has been active in informing the Government and consumers about the importation of second hand vehicles.

(ii) The current economic slump has affected the entire Motor sector thereby resulting in serious sales drop from 18,000 units in the late nineties to below 10,000 units per annum and this is not serving Kenyans adequately. The net result is congestion on public transport, higher transport costs of goods and services, loss of man-hours etc.

(iii) The government policy is in favour of the new motor vehicle dealers as the taxation levels are geared towards protecting them in general. As a result, the cost of motor vehicles in Kenya is high compared to other countries in the region and other developing nations.

(iv) Kenya being predominantly an agricultural and tourism based economy, cheaper or affordable means of transport will mean a big boost to these vital sectors of our economy. With the expected increase in fleet, means increased fuel consumption, which will translate to increased tax revenue.

(v) The Association imports approximately 9,500 units annually with an average tax payable of Ksh.300,000 and annual revenue to the Government of Ksh.2.85 billion.

(vi) The Association's membership is 873 and each member employs 3 persons hence totaling 2,619 persons. Indirect employment by the Association includes at least one driver for each vehicle imported and ancillary jobs in clearing and forwarding, service and repairs, fuel and lubricant consumption. Therefore, total employment is around 17,000 annually.

(vii) Age in itself is more of a policy than a standard. Therefore it appears that the technical Committee set the age requirement so as to push up the prices of second hand motor vehicles and to protect the interest of Kenya motor industry/ new motor dealers.

(viii) Technical inspection of vehicles is done in Japan based on Kenya Bureau of Standards test manual irrespective of the age. Therefore, since all vehicles to be imported are subject to this inspection, then all the required standards should be upheld except age.

(ix) The technical Committee comprising representatives of the following is not representative: -

- General Motors Kenya Ltd.
- Kenya Auto Bazaar Association
- Kenya Vehicle Manufacturers Ltd.
- Kenya Motor Institute
- Kenya Association of Manufacturers
- Ministry of Roads and Public Works
- K.I.R.D.I.
- Automobile Association of Kenya
- Ministry of Transport and Communications
- Office of the President (Vehicle Inspection)
- Kenya Bureau of Standards (Secretariat)

(x) If KBS was serious about the quality and conditions of road vehicles for safety, then, KBS should have started with vehicles already on the Kenyan roads e.g. Ford models plying industrial area route or country buses without emergency doors.

(xi) KBS has made a requirement that all imported vehicles must be locally inspected. Consequently, Kenya Motor Industry is already soliciting support from KBS to be the appointed authorized local inspection agent.

(xii) KBS has not assisted importers caught in the crisis of the age limit as KBS has been rejecting vehicles of over 8 years but instead allows the same to be auctioned. At the moment there are vehicles stuck at the port in Mombasa as KBS has directed COTECHNA not to process CRF issued after 25th June 2002.

(xiii) **Import Duty**

Currently new Fully Built Units (F.B.Us) are taxed at 35% Import Duty while used vehicles are taxed at 35% plus an anti-dumping penalty of 20% or Ksh 30,000 for vehicles over 5 years old and 20% or Ksh 60,000 for vehicles over 8 years old on the value determined by pre-shipment companies.

Consequently, the overall cost of vehicles are pushed way above many Kenyans reach due to the above tariffs.

(xiv) **Value Added Tax (VAT)**

This tax is at 18% and it affects all categories of vehicles except those of seating capacity of 30 and above.

(xv) **Excise Duty**

This is applicable to all private vehicles exceeding 1801 cc. and in the budget speech, the Minister introduced a 10% tax to cover vehicles of seating capacity of 1 to 26 and as a result the tax has increased.

(xvi) **Registration**

There exists a glaring bias against second hand vehicles during registration. Up and above all applicable taxes, the imported second hand vehicle is subjected to extra fees for Road Safety Fund (RSF), Back License (BL) and Second Hand Purchase Tax (SHPT). These are extra taxes on second hand vehicles and not on new ones.

(xvii) **Regulations**

(a) **Custom Bonding**

Presently there is a ban on warehousing of second hand vehicles. This has greatly impoverished many importers in that, failure to pay import duty on time means that the government will auction the vehicle. Contrary, importers of new vehicles enjoy warehousing facilities hence never face the threat of being auctioned.

(b) **Technical inspection**

It is mandatory for all used vehicles to be inspected by a competent body in the country of origin to determine their roadworthiness before pre-shipment is done. This requirement has cost implications and the importer has to part with USD 200 to 500 for each inspection. New FBU's imported into the country do not incur the extra cost.

5. COMMENTS BY THE MANAGEMENT OF KENYA BUREAU OF STANDARDS

The management of KBS informed the Committee that: -

(i) KBS has been mandated by the Kenya Government through Legal Notice No. 227 of 1995 and other subsequent legislations to carry out quality inspection on all imports into the country which includes vehicles.

(ii) The purpose of this inspection is to ensure that imports to Kenya comply with the requirements of Kenya Standards/approved standards against which locally manufactured goods are also tested so as to curb the dumping of sub-standard products into the local market.

(iii) In line with this, the importers are expected to inform their suppliers about the requirements of Kenyan standards and to ensure that such imports are inspected for quality at their points of origin before shipment.

(iv) A technical Committee comprising representatives from the motor industry has set up a code of practice for inspection of road vehicles to regulate the quality and conditions of road vehicles for safety, environmental and economic reasons.

(v) The technical Committee considered the useful life of a motor vehicle and recommended 8 years to be logical to enable importers time to use the vehicles.

(vi) KBS is only one of the players in handling imported vehicles and that there is lack of coordination between various sectors.

(vii) While trying to enforce 8 years age compliance, KBS is helping importers caught in the crisis by clearing already ordered vehicles.

(viii) KBS is negotiating with Japanese Government to accredit an organization for mechanical inspection of vehicles to be imported from Japan to ease inconvenience to importers.

6. OBSERVATIONS

The Committee deliberated on the Finance Bill, 2002 and made the following observations:

(i) ***Clause 11***

The effect of the amendment is that Excise Duty will be charged on airtime for usage of cellular mobile phone.

The Committee was informed that the revenue realized from airtime tax will be a specific fund managed by a trustee and dedicated for the following:

(i) Rural electrification
(ii) Credit for Macro-enterprises
(iii) Procurement of HIV/AIDS drugs
(iv) Scholarship to HIV/AIDS orphans

The Committee observed that:

(a) Colossal sum of money has been paid to KPLC as levy for rural electrification without much being done in the rural areas.
(b) The National Aids Control Council is unable to account for the money already given for matters related and connected to HIV/AIDS.

(c) The market has not responded positively to the reduction or exemption of tax on mobile handsets and scratch cards as the mobile service charges are still high.

(d) There is no proper financial structure to advance or provide credit facilities to macro-enterprises.

(e) Both Safaricom and Kencell are making substantial profit such that the two mobile service providers should be able to absorb the 5% airtime tax.

(ii) ***Clause 16***
The amendment provides for both fine and imprisonment for the adulteration of petroleum products.

The Committee observed that, the judiciary has always been compromised hence there has been no deterrent measures to make it less attractive and more punitive to adulterate petroleum products.

(iii) ***Clause 18***
The amendment seeks to exempt the National Security Intelligence Service (NSIS) from providing for budgetary allocation through the parent ministry's vote to cater for payment of taxes and duties for official equipment, machinery, uniform etc.

The Committee observed that there is no justification for the exemption of the NSIS from budgetary scrutiny since it is not meeting its security targets, e.g. the influx of illegal firearms, narcotics etc.

(iv) ***Clause 23***
The amendment expands the definition of "hotel" to ensure that restaurant and accommodation services by any name are covered within the definition.
The Committee observed that there are many people who own private buildings and provide accommodation and restaurant services locally by receiving payments abroad hence escape the tax net.

(v) ***Clause 27***
The amendment empowers the Minister to limit the remission of tax donations for the poor and destitutes.

The Committee observed that it will be very difficult to determine the deserving charitable organizations.

(vi) ***Clause 44***
The amendment requires all employees to file income tax returns.

The Committee observed that this is likely to be abused by the Administration Police and the Provincial Administration personnel who are likely to harass people at the village level under the pretext of enforcing the law.

(vii) ***Clause 53***

The amendment proposes to transfer levy collection function from Catering Levy Trustee to KRA

The Committee Observed that:-

(a) Retrenchment of staff is very unpopular especially in the election year and proposal by KRA to absorb a few staff from CLT after the transfer of levy collection function begs a lot of questions as to the fate of the rest of the staff (138).

(c) In the proposed transfer of levy collection function, the Finance Bill 2002 appears to be addressing the monetary gains for the Budgetary deficit and not other intricacies.

(d)

Further, the data availed by both CLT and KRA to justify collection efficiency are conflicting

(c) The bureaucracies of transferring the levy funds from CLT to KRA will affect the development of the tourism industry. It is only through the collection of the levy by CLT that the Industry is assured of continued control and use of the fund to the satisfaction of the sector.

(d) It appears that KRA is operating under capacity to justify additional burden of levy collection without absorbing all CLT staff (138).

(e) There is no legal justification for one Authority established under an Act of Parliament to administer the functions of another Authority established the same way without amendment to the Act.

(viii) ***Clause 54***

The amendment seeks to raise the second hand motor vehicle purchase tax by 15%.

The Committee observed that:

(a) The increase is big yet the per capita income has declined over the years while there is weakness in the monitoring mechanism on the usage of revenue collected from purchase tax.

(b) Kenya Motor Industry Association which is representing Franchise holders in Kenya is enjoying protection from Ministry of Trade.

(c) Most importers are economically disadvantaged and inconvenienced by the current ban on importation of vehicles over 8 years as over 25,000 units already ordered are stuck in Japan partially paid for and awaiting shipment.

(d) Pre-shipment companies have refused to accept or process Import Declaration Forms (IDF) for vehicles over 8 years citing Kenya Bureau of Standards STD KS1515-2000.

(e) The additional Excise Tax of 10% on all passenger vehicles has had a negative impact on public transport with many Kenyans employed in this sector loosing their source of employment.

(f) There is no justification by KBS to reject or prohibit the importation of second hand vehicles which meet all the technical and mechanical inspection requirements except age.

(g) The Mahindras were bought as new FBU's but are now grounded hence age is irrelevant. Buses built in Kenya without emergency doors are built under what standard?

(h) Members of the technical Committee are interested parties and there is a wide representation from the new motor dealers hence the composition is not fair/ representative.

(i) The proposed amendment in the Finance Bill, 2002 has not been passed by Parliament. Therefore it is wrong for KBS to subject poor Kenyans to such punitive measures.

(j) KABA is owned by indigenous Kenyans while New Motor Dealers Association is owned by foreigners hence the latter does not want to entertain competition.

(k) Since KBS has not come up with standards for the roads in Kenya, age is therefore irrelevant because most of the vehicles become unroadworthy due to poor conditions of the roads and not age.

(j) The age limit requirement is overlooked and exceptions granted to officers returning from foreign missions. This amounts to double standards if all importation are to be subjected to the same requirement.

(m) Vehicles rejected and condemned by KBS still find their way into the local market through auction. KBS has not given proof of vehicles re-exported for not meeting the required standards.

(n) Attempts to impose the age limit through the Finance Bill has been rejected twice by Parliament. KBS has now used the ministry of Trade through a legal notice.

(ix) **General**

The Committee observed that there is no provision in the 2002/03 Estimates for the following:

(a) Improvement of KPA Port facilities to attract more business and generate more revenue.
(b) Enhancement of Kenya Revenue Authority activities like a scanning machine to improve revenue collection.
(c) Tourism promotion in the new markets by the Kenya Tourist Board.

4. RECOMMENDATIONS

The Committee deliberated on the Finance Bill, 2002 and recommended the following:

(i) ***Clause 11***

Revenue realized from airtime tax for the usage of cellular phone should not be spread into many uses as suggested because this will not have an impact. Instead, the government should tackle the earmarked programmes one at a time to create impact and preferably HIV/AIDS and or Rural Electrification Programmes.

There is need to licence more mobile service providers as the level of competition between the current two operators has made the mobile services very expensive.

(ii) ***Clause 18***
All raw materials including clinker should be zero-rated for duty.

(iii) ***Clause 42***
The maturity period for education policies should be five years and not ten years.

(iv) ***Clause 48***
The Government should grant income tax exemption to retrenchees and retirees and encourage them to invest in say stock market.

(v) ***Clause 53***
The Minister for Information and Tourism proposed the following recommendations: -

1. Since the Hotels and Restaurants Act Cap 494 has not been amended since 1972, there is need to amend the Act to ensure increased efficiency of CLT, to raise revenue and reduce costs instead of transferring the collection function to KRA.

   Such amendments would include: -

   (i) Broadening the base of collection of 2% levy by including tour and Travel Operators, private members clubs and all other services provided in the Hotels and Restaurants.

   (ii) Granting authority to enter, inspect and carry out assessment on records for such establishments.

   (iii) Authority to attach defaulters accounts in case of long defaults as provided for in the VAT, Income Tax and Customs Acts.

(iv) Introducing a Distress Clause in the Act to minimize collection of arrears costs and ensure timely collection of such arrears.

2. If the levy collection function is to be transferred to KRA, then there is need to amend or repeal the CLT Act. Since the CLT Act has not been repealed, the collection function should remain with CLT.

3. In consolidation of revenue, KRA should target big institutions like the National Social Security Fund and Ministry of Lands before targeting small ones like CLT.

(iii) ***Clause 54***

All importers should pay duty at the port of entry. Currently, New Motor dealers enjoy warehousing bonding facilities and only pay tax at the time of sale while Second Hand vehicles dealers pay tax at the time of importation.

5. PROPOSED AMMENDMENTS TO THE FINANCE BILLL, 2002

The management of Kenya Auto Bazaar Association proposed the following amendments to the Finance Bill, 2002.

(i) CUSTOMS AND EXCISE DEPARTMENT

(a) **Import Duty**

- New locally Assembled vehicles be zero rated.
- New or used imported vehicles be levied at 25%.

The proposed amendments will encourage:-

- Local Assembly and thus create jobs.
- Provision of newer vehicles, reduce vehicle to person ratio and replace the aging national fleet.

(b) **Anti- Dumping**
Section 2(2) of the customs Act (Cap 472) which was amended in 1989 to impose dumping tax of 20% on second hand vehicles be deleted. This will make taxation level equal to new Fully Built Units (F.B.Us) and widen affordability to most Kenyans.

(c) **Excise Duty**
The duty should be done away with to encourage importation of 1801 cc and above which are better suited to our roads and attract more Import Duty due to the higher invoice value. Such vehicles would also assist in boosting the agricultural and Tourism sector because of their suitability.

(d) **Bonded warehousing**
That Customs and Excise Act Regulation 61Sub section 2(vi) be deleted.This will allow export to the wider East and Central Africa region thereby earning foreign exchange.

(ii) **VALUE ADDED TAX DEPARTMENT**

(a) Locally assembled vehicles be zero rated on VAT to encourage affordability.

(b) All passenger vehicles of above 5 seating capacity be VAT exempt by amending VAT Act Section 23(3)(b) thus deleting the words "twenty six" and inserting the word "five".

(c) This will make passenger- carrying vehicles (Matatu's) affordable thus increase the fleet, reduce transport cost and congestion. It will also be a boost to the tourism and agricultural sectors.

(iii) **TECHNICAL INSPECTIONS**
Technical Inspections should be applicable to both new and used vehicles imported into the country.
Experience has shown that some of the FBU's have serious technical defects e.g. the Mahindras and Tata trucks.

(iv) **REGISTRAR OF MOTOR VEHICLES**
(a) There is need to eliminate Annual Road License fee and introduce it as part of the fuel levy fund.

(b) Road Safety Fund and Back License should be applicable to all motor vehicles registered in Kenya or be done away with.

(c) There should be uniform registration fees for all motor vehicles be they new or used.

6. CONCLUSION

The Committee recommends that the house adopts the Finance Bill, 2002 together with the recommendations contained in the Committee's report.

Mr. Speaker Sir, may I take this opportunity to thank Members of Finance, Planning and Trade Committee for their valuable contributions during the deliberations on the Finance Bill. I would also like to thank the Minster for Finance and his team.

Hon. Simeon M. Mkalla, MP
Chairman
Departmental Committee on Finance, Planning and Trade

Date ...16th October 2002