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REPUBLIC OF KENYA



NATIONAL ASSEMBLY

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TWELFTH PARLIAMENT – SECOND SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE
AND NATIONAL PLANNING

REPORT ON THE CONSIDERATION OF THE PRESIDENT'S
MEMORANDUM ON THE FINANCE BILL, 2018

CLERKS CHAMBERS
DIRECTORATE OF COMMITTEE SERVICES
PARLIAMENT BUILDINGS
NAIROBI

SEPTEMBER, 2018

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ABBREVIATIONS

ITA	–	Income Tax Act
VAT	–	Value Added Tax

CHAIRPERSON'S FOREWARD

The Finance Bill, 2018 was passed by the National Assembly on **Thursday, 30th August, 2018**. In accordance with Article 115(1) (b) the President referred the Finance Bill, 2018 back to Parliament for reconsideration on **Thursday, 13th September, 2018**. The President's reservations were subsequently submitted to the Committee for consideration in line with the provisions of the Constitution and the Standing Orders.

The Committee thanks the Office of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the process of considering the President's reservations to the Finance Bill, 2018.

The Chairperson thanks all the Members of the Committee and the secretariat for their sacrifice and commitment in considering the President's reservations to the Finance Bill, 2018.

Hon. Speaker, it is now my pleasant duty and privilege to present and commend this report of the Departmental Committee on Finance and National Planning, for consideration and approval by the House pursuant to Article 115 of the Constitution.

THE HON. JOSEPH LIMO, M.P.

CHAIRPERSON

EXECUTIVE SUMMARY

The Finance Bill, 2018 was passed by the National Assembly on Thursday, 30th August, 2018. The Bill was seeking to amend various laws relating to taxes and duties and for matters incidental thereto. In line with the powers conferred by Article 115 of the Constitution, H.E the President expressed his reservation to assent to the Finance Bill, 2018. Consequently, the Memorandum was sent to the National Assembly on Thursday, 13th September, 2018 detailing the reasons for his reservations. Thereafter, the Speaker vide a communication dated **18th September, 2018** conveyed the President's Memorandum on the Finance Bill, 2018 and subsequently referred it to the Departmental Committee on Finance and National Planning for consideration. H.E expressed his reservations together with recommendations as follows: -

1. Insertion of a new definition in Section 2 of the ITA on the term winnings.
2. Deletion of Clause 18(b) relating to the First Schedule to the VAT Act, 2013 which was proposing the extending of the exemption from VAT on Petroleum products from September 2018 to a further period of two years i.e. September 2020.
3. Insertion of a new paragraph in Section 5(2) of the VAT Act, 2013 to provide for VAT for Petroleum products to be at 8 % from 16 % as per the amendment of the VAT Act in 2016. The proposal will also ensure that the taxable value of petroleum products exclude excise duty, fees and other charges and further ensure that the section comes into effect upon passage of the Supplementary Appropriations (No.2) Act, 2018.
4. Proposed amendments to Part I of the First Schedule to the Excise Duty Act, 2015 to provide for levying of excise duty on sugar confectionery (including white chocolate) of tariff heading 17.04; chocolates blocks, slabs or bars of tariffs nos. 1806.31.00, 106.32.00 and 8806.90.00 at the rate of Kshs. 20 per kg.
5. Proposed amendments to Part II of Paragraph 3 of the First Schedule to the Excise Duty Act, 2015 by deleting paragraph I (as contained in the Excise Duty Act, 2015) and substituting with the paragraph as follows "telephone and internet data services shall be charged excise duty at a rate of fifteen percent of their excisable value." Further proposals on the same clause relate to the excise duty on fees for money transfer services by banks, money transfer agencies and other financial service providers at the rate of twenty (20%) percent from the current 10%. The net effect of this move would result in

the doubling of the excise duty on fees charged by banks, money transfer agencies and other financial service providers. The effect of this on the national revenue will yield additional revenue.

6. Insertion of new sections in the Betting, Lotteries and Gaming Act which is meant to reduce betting, lottery gaming, price competition tax payable by the companies from the current 35 % to 15%. Through the amendment made in the Tax Laws Act, 2018, the ITA was amended to provide for the tax payable from winnings at the rate of 20 %. However, the tax payable by companies remained at 35%. The original intention in the tax laws Act was to ensure that the tax burden of 35 % was shared at the ratio of 20: 15 by punters and companies respectively.
7. Insertion of new definitions in Section 2 of the Employment Act to provide for the definition of the terms employee contribution, employer contribution, employees earning and the National Housing Development Fund.
8. Insertion of a new section 31A to the Employment Act to support the housing pillar of the Governments Big Four Plan to have a mandatory contribution of one point five percent of the employee' monthly basic salary contributed by both employer and employee.
9. Insertion of a new section to the Miscellaneous, Fees and Levies Act to include the anti-adulteration levy to illuminating kerosene. This is meant to eliminate adulteration of diesel with kerosene as this will bring at per the cost of kerosene to that of diesel. The levy on illuminating kerosene shall be eighteen shillings per litre of the customs value to be paid by importers at the time of entry into Kenya.

In line with the Speakers Communication, the Committee proceeded to consider the President's Memorandum on the same day. Subsequent meetings were also held on 19th September, 2018 where the Committee engaged the National Treasury. The deliberations formed the basis on which the Committee made its decisions.

The Committee having considered the President's Memorandum and recommendations therein adopts the President's proposed amendments to the Finance Bill, 2018 with an exception of the proposal to levy excise duty on sugar confectionery (including white chocolate) of tariff heading 17.04; chocolates blocks, slabs or bars of tariffs nos. 1806.31.00, 106.32.00 and 8806.90.00 at the rate of Kshs. 20 per kg. The Committee is of the view that this will have a negative effect on

the manufacturing pillar of the Big Four Agenda and also make the country uncompetitive within the region.

1. PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

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);
- (fa) **To examine treaties, agreements and conventions;**
- g) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) To examine any questions raised by Members on a matter within its mandate.

1.2 MANDATE OF THE COMMITTEE

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.

In executing its mandate, the Committee oversees the following government Ministries;

- i. The National Treasury and Ministry of Planning
- ii. Ministry of Devolution and ASAL
- iii. Office of the Controller of Budget
- iv. Salaries and Remuneration Commission
- v. Commission on Revenue Allocation

1.3 COMMITTEE MEMBERSHIP

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

1. The Hon. Joseph K. Limo, MP – **Chairperson**
2. The Hon. Isaac W. Ndirangu – **Vice-Chairperson**
3. The Hon. Jimmy O. Angwenyi, MP
4. The Hon. Alfred W. Sambu, MP
5. The Hon. Enoch Kibunguchy, MP
6. The Hon. Shakeel S. Ahmed, MP
7. The Hon. Abdul R. Dawood, MP
8. The Hon. Daniel E. Nanok, MP
9. The Hon. Andrew A. Okuome, MP
10. The Hon. David M. Mboni, MP
11. The Hon. Francis K. Kimani, MP
12. The Hon. Joseph M. Oyula, MP
13. The Hon. Joshua C. Kandie, MP
14. The Hon. Lydia H. Mizighi, MP
15. The Hon. Mohamed A. Mohamed, MP
16. The Hon. Purity W. Ngirici, MP
17. The Hon. Samuel Atandi, MP
18. The Hon. Stanley M. Muthama, MP

1.4 COMMITTEE SECRETARIAT

- | | |
|------------------------|-------------------------------------|
| 1. Ms. Leah W. Mwaura | - Senior Clerk Assistant/Lead Clerk |
| 2. Ms. Jennifer Ndeto | - Principal Legal Counsel |
| 3. Ms. Laureen Wesonga | - Third Clerk Assistant |
| 4. Mr. Josephat Motonu | - Fiscal Analyst I |
| 5. Mr. Chelang'a Maiyo | - Research & Policy Analyst III |
| 6. Mr. Collins Mahamba | - Audio Officer |
| 7. Mr. John Njoro | - Serjeant-At-Arms |

2 CONSIDERATION OF THE PRESIDENT’S RESERVATIONS TO THE FINANCE BILL, 2018

The Committee held meetings on 18th and 19th September, 2018 to deliberate on the President’s reservations to the Finance Bill, 2018 and resolved as follows:-

2.1 Insertion of a new definition in Section 2 of the ITA – As proposed by the President

Section 2 of the Income Tax Act is amended by deleting the definition of “winnings” and substituting therefor the following new definition:

“winnings” include winnings of any kind and a reference to the amount or to the payment of winnings shall be construed accordingly”

2.1.1 The Committee’s recommendation

The Committee agreed to the President’s recommendation to insert a new Clause 2A to the Income Tax Act.

2.1.2 Justification

This will widen the tax base, remove complexities in computation of the tax and for consistency with the Betting, Lotteries and Gaming Act. The Government projects to collect additional Kshs. 25 billion from this proposal.

2.2 Clause 18 – As proposed by the President

Deletion of Clause 18(b)

2.2.1 The Committee's Recommendation

The Committee agreed to the proposal of the President to delete Clause 18(b) that was seeking to extend the period of imposition of excise duty on Petroleum products by a further two years i.e. September 2020.

2.2.2 Justification

The National Treasury had projected to collect close to Kshs. 35 billion to finance the budget and hence with the extension of period, it was going to leave the budget with a shortfall of Kshs. 35 billion.

2.3 Insertion of a new paragraph in Section 5(2) of the VAT Act, 2015 – As proposed by the President

Inserting New Clause 18A

Section 5 of the VAT Act, 2013 is amended in subsection 2 by inserting the following new paragraph immediately after paragraph (a)

(aa) in the case of goods listed in Section B of Part I of the First Schedule, eight percent (8%) of the taxable value, effective from the date of assent:

Provided that-

- (i) the taxable value in respect of these goods shall exclude excise duty, fees and other charges;
and
- (ii) despite section 1 of the Finance Act, 2018, this paragraph comes into effect upon enactment of the Supplementary Appropriation Act.

2.3.1 The Committee's recommendation

The Committee agreed to the President's recommendation to insert new clause 18A but also amended by moving the commencement date to clause 1 of the Finance Bill, 2018 and further make reference to Supplementary Appropriation Act (no. 2) of 2018 for specificity.

2.3.2 Justification

The intent of this amendment is to ensure that the exemptions in the VAT Act are reduced since this is the best practice for VAT regime. This will widen the tax base hence increasing revenue collection. The National Treasury projects to collect Kshs. 17.5 billion from this tax.

2.4 Proposed amendments to Part I of the First Schedule to the Excise Duty Act, 2015 – As proposed by the President

Part I of the First Schedule of the proposal be amended by adding the following new item:

Description	Rate of Excise Duty
Sugar confectionary (including white chocolate) of tariff heading 17.04; chocolate blocks, slabs or bars of tariffs nos. 1806.31.00, 1806.32.00 and 8806.90.00	Shs. 20 per kg

2.4.1 The Committee's Recommendation

The Committee rejected the President's recommendation to Part I of the First Schedule to the Excise Duty Act, 2015.

2.4.2 Justification

- i. Enactment of this recommendation will be against the manufacturing pillar of the Big Four Agenda.
- ii. The amount of money projected to be collected from this tax is only Kshs. 473 million.
- iii. It will make Kenya uncompetitive in the region in terms of confectioneries due to the increased prices as a result of the tax.
- iv. Some confectionery industries may move to neighboring countries hence leading to job losses.

2.5 Proposed amendments to Part II of Paragraph 3 of the First Schedule to the Excise Duty Act, 2015 – As proposed by the President

Part II of the First Schedule be amended:

- (i) by deleting paragraph 1 and substituting therefor the following new paragraph:

Telephone and internet data services shall be charged excise duty at a rate of fifteen percent of their excisable value.
- (ii) by deleting paragraph 2 and substituting therefor the following new paragraph:

Excise duty on fees charged for money transfer services by banks, money transfer agencies and other financial service providers shall be twenty percent of their excisable value.
- (iii) by deleting paragraph 4 and substituting therefor the following new paragraph:

Excise duty on other fees charged by financial institutions shall be twenty percent of their excisable value.

2.5.1 The Committee's Recommendation

The Committee agreed to the President's recommendation to amend Part II of Paragraph 3 of the First Schedule to the Excise Duty Act, 2015.

2.5.2 Justification

- i. This recommendation is replacing the 'Robin Hood Tax' which would be more expensive and complicated to compute.
- ii. The revenue collected through this recommendation will be used to finance universal health care.
- iii. The National Treasury projects to collect 20.2 billion from this.

2.6 Insertion of new sections in the Betting, Lotteries and Gaming Act

Insert the following new Sections in the Act-

Section 29A of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the expression "thirty-five" and substituting therefor the expression "fifteen".

Section 44A of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the expression "thirty-five" and substituting therefor the expression "fifteen".

Section 55A of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the expression “thirty-five” and substituting therefor the expression “fifteen”.

Section 59B of the Betting, Lotteries and Gaming Act is amended in subsection (1) by deleting the expression “thirty-five” and substituting therefor the expression “fifteen”.

2.6.1 The Committee’s Recommendation

The Committee agreed to the President’s recommendation to insert new sections in the Betting, Lotteries and Gaming Act.

2.6.2 Justification

The intent of this recommendation is to distribute the tax burdens fairly between the winnings and the companies. The high taxation has a net effect of encouraging the players to bet on international platforms where the tax is not punitive. The recommendation is expected to raise revenue from Kshs. 8.7 billion to between Kshs. 24 billion and Kshs. 30 billion.

2.7 Insertion of new definitions in Section 2 of the Employment Act – As proposed by the President

Section 2 of the Act be amended by defining the following terms-

“employer contribution” means the employer’s contribution payable into the National Housing Development Fund;

“employee contribution” means a contribution payable under this Act for his or her benefit;

“employee earnings” means the taxable amount determined under the ITA for purposes of levying income tax on the employee emoluments.

“National Housing Development Fund” means the Fund established under section 6 of the Housing Act.

2.7.1 The Committee's Recommendation

The Committee's agreed to the President's recommendation to insert new definitions in Section 2 of the Employment Act.

2.7.2 Justification

The proposed Section 31A uses terms that are technical in nature that require to be defined for clarity.

2.8 Insertion of a new section 31A to the Employment Act – As Proposed by the President

The Employment Act is amended by inserting the following new section:

31A (1) An employer shall pay to the National Housing Development Fund in respect of each employee-

- a) the employer's contribution at one point five per centum of the employee's monthly basic salary; and
- b) the employee's contribution at one per centum of the monthly basic employee's salary: Provided that the sum of the employer and employee contributions shall not exceed five thousand shillings monthly.

(2) the benefits to an employee shall accrue as follows-

- a) for employees who qualify for affordable housing, the contributions accrue to the employee and shall be used to finance the purchase of a house under the affordable housing scheme; or
- b) for employees who are not eligible for affordable housing, upon the expiry of fifteen years from the date of the start of making the contributions, or after the attainment of retirement age, whichever is sooner-
 - i. a transfer of their contributions to a pension scheme registered with the Retirement Benefits Authority;

- ii. a transfer of their contributions to any person registered and eligible for affordable housing under the National Housing Development Fund; or
- iii. a transfer of their contributions to their spouse or dependent children; or
- iv. to receive their contributions in cash;

Provided that contributions paid out in cash shall be subject to tax at the prevailing rates.

(3) All contributions shall get a return based on the return on the Fund.

(4) The employer shall remit both employee and employer contributions to the National Housing Development Fund before the ninth day of the following month.

(5) If the contributions due under this section are not paid on or before the day on which the payments are due, a penalty of five percent of the contributions shall be payable by the employer for each month or part thereof during which the contributions remain unpaid, and any such penalties shall be recoverable as a sum due and payable to the National Housing Development Fund.

(6) This section shall become effective upon the Gazettement of Regulations prescribing the requirements for qualification to the scheme by the Cabinet Secretary responsible for housing in consultation with the Cabinet Secretary responsible for finance.

2.8.1 The Committee's Recommendation

The Committee agreed to the President's recommendation to insert a new Section 31A to the Employment Act.

2.8.2 Justification

- i. This will support the Government's agenda on affordable housing.

- ii. The proposal provides for the benefit that will accrue for employees who are not eligible for affordable housing, upon the expiry of fifteen years from the date of the start of making the contributions, or after the attainment of retirement age.
- iii. The recommendation provides for the transfer of one's shares on retirement or if they are not eligible for affordable housing.

2.9 Insertion of a new section to the Miscellaneous, Fees and Levies Act – As proposed by the President

The Miscellaneous Fees and Levies Act is amended by inserting the following new section 8A immediately after section 8-

8A(1) there shall be paid a levy to be known as the anti-adulteration levy, on all illuminating kerosene imported into the country for home use.

(2) the levy shall be at the rate of eighteen shillings per litre of the customs value of the illuminating kerosene and shall be paid by the importer at the time of entering the illuminating kerosene into the country.

2.9.1 The Committee's Recommendation

The Committee agreed to the President's recommendation to insert new section 8A to the Miscellaneous, Fees and Levies Act.

2.9.2 Justification

- i. Fuel adulteration has led to immense losses in the country including loss of business to other countries, damaging of vehicles and pollution.
- ii. The Government projects to raise Kshs. 9.8 billion from the anti-adulteration levy.

3. COMMITTEE'S RECOMMENDATION

The Committee having considered the President's reservations to the Finance Bill, 2018 and pursuant to Article 115 of the Constitution, recommends as follows:-

1. Approve the insertion a new definition in Section 2 of the Income Tax Act
2. Approve the deletion of Clause 18.
3. Approve the insertion of a new paragraph in Section 5(2) of the VAT Act, 2015
4. Reconsideration of the amendment of Part I of the First Schedule to the Excise Duty Act, 2015.
5. Approve the amendment of Part II of Paragraph 3 of the First Schedule to the Excise Duty Act, 2015
6. Approve the insertion of new sections in the Betting, Lotteries and Gaming Act
7. Approve the insertion of new definitions in Section 2 of the Employment Act
8. Approve the insertion of a new section 31A to the Employment Act
9. Approve the insertion of a new section to the Miscellaneous, Fees and Levies Act

4 COMMITTEE STAGE AMENDMENTS

Having considered the reservation by H.E the President on the Finance Bill, 2018 as passed by the House, the Committee came up with the following proposed amendments: -

CLAUSE 1

THAT, the Bill be amended in clause 1 by inserting the following paragraph immediately after paragraph (a)—

(ab) section 18A on the date of assent;

NEW CLAUSE 18A

THAT, the presidential memorandum be amended in the proposed amendment to section 5 of the Value Added Tax Act by —

(i) deleting the words “effective on the date of assent”

(ii) deleting the words “Supplementary Appropriations Act” and substituting therefor the words “Supplementary Appropriations (No.2) Act, 2018”

CLAUSE 31

THAT, the Presidential memorandum be amended by deleting the proposed amendment to clause 31 (a) (iii).

SIGNED.....



DATE.....

20/9/2018.....

THE HON. JOSEPH LIMO, M.P.

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

5 ANNEXTURES

1. The Minutes of the proceedings of the Committee
2. President's reservations to the Finance Bill, 2018