



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2019

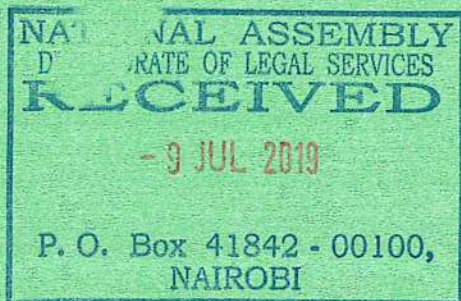
NAIROBI, 1st July, 2019

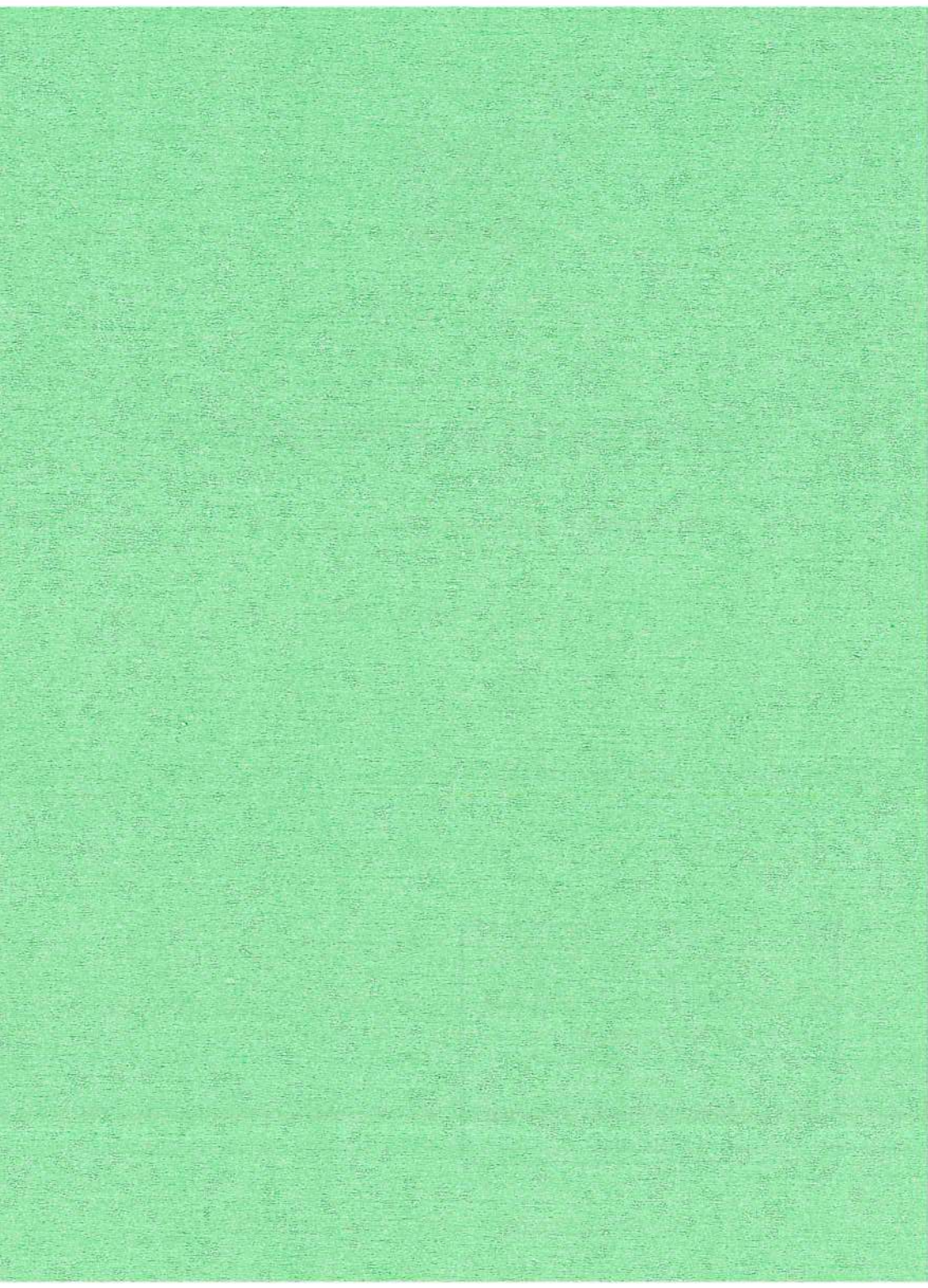
CONTENT

Bill for Introduction into the National Assembly —

PAGE

The Finance Bill, 2019 785





THE FINANCE BILL, 2019

A Bill for

AN ACT of Parliament to amend the law relating to various taxes and duties and for matters incidental thereto

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Finance Act, 2019, and shall come into operation, or be deemed to have come into operation, as follows—

Short title and commencement.

(a) sections 7, 12 and 46, on the 1st January, 2020; and

(b) all other sections, on the assent.

PART II—INCOME TAX

2. Section 2 of the Income Tax Act is amended —

Amendment of s. 2 of Cap. 470.

(a) by deleting the definition of “demurrage charges”.

(b) by inserting the following definition in proper alphabetical sequence—

“investee company” means an investee company within the meaning of the Capital Markets Act and the regulations made thereunder.

3. Section 3 of the Income Tax Act is amended —

Amendment of s. 3 of Cap. 470.

(a) in subsection (2) by inserting the following new paragraphs immediately after paragraph (c) —

(d) income chargeable to tax includes income accruing through a digital marketplace;

(b) in subsection (3) by inserting the following new paragraph immediately after paragraph (b)—

(c) digital marketplace means a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means;

4. Section 7A of the Income Tax Act is amended by deleting the proviso thereto and substituting therefor the following new proviso –

Amendment of s.
7A of Cap. 470.

Provided that this section shall not apply to income which is exempt under this Act.

5. Section 9 of the Income Tax Act is amended in subsection (1) by inserting the following proviso –

Amendment of s.
9 of Cap. 470.

Provided that all income of a non-resident shipping line including income from delay in taking delivery of goods or returning any of the equipment used for transportation of goods shall be deemed to be income derived from Kenya.

6. Section 10 of the Income Tax Act is amended in subsection (1) by—

Amendment of s.
10 of Cap. 470.

- (a) deleting paragraph (i);
- (b) inserting the words “or reinsurance” immediately after the word “insurance” appearing in paragraph (j);
- (c) adding the following new paragraph immediately after paragraph (j) –
 - (k) security services, cleaning and fumigation services, catering services offered outside hotel premises, transportation of goods (excluding air transport services), sales promotion, and marketing and advertising services.
- (d) inserting the words “except for deductions provided for by agreements under section 41” to paragraph (ii) of the proviso thereto;

7. The Income Tax Act is amended by repealing section 12C and replacing it with following new section –

Repeal and
replacement of s.
12C of Cap. 470.

Turnover and
presumptive tax.

12C (1) Notwithstanding any other provision of this Act, a tax to be known as turnover tax shall be payable by any resident person whose turnover from business does not exceed or is not expected to exceed five million shillings during any year of income.

(2) Despite subsection (1), a person who would otherwise be liable to pay turnover tax under this section may, by notice in writing addressed to the Commissioner, elect not to be subject to the provisions of this section, in which case the other provisions of this Act shall apply to such person.

(3) Notwithstanding subsection (1), turnover tax shall not apply to—

- (a) rental income;
- (b) management or professional or training fees;
- (c) the income of incorporated companies; or
- (d) any income which is subject to a final withholding tax under this Act.

(4) A person subject to turnover tax under this section shall submit a return and pay the tax due to the Commissioner on or before the twentieth day of the month following the end of the tax period.

(5) A person required to pay turnover tax under this section, shall be liable to pay presumptive tax equal to fifteen percent of the amount payable for a business permit or trading license issued by a county

government which shall be offset against the tax payable under subsection (1).

(6) The presumptive tax under subsection (5) shall be payable at the time of payment for the business permit or trade license or renewal of the licences.

(7) A person subject to turnover tax under this section shall be required to keep records necessary for the determination and ascertainment of the tax in accordance with the Tax Procedures Act, 2015.

(8) For purposes of this section “tax period” means a calendar month.

8. Section 20 of the Income Tax Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (c)—

Amendment of s.
20 of Cap. 470.

(d) an investee company of a real estate investment trust.

9. Section 34 of the Income Tax Act is amended—

Amendment of s.
34 of Cap. 470.

(a) in subsection (1), by deleting the words “five percent” appearing in paragraph (j) and substituting therefor the words “twelve and a half percent”; and

(b) in subsection (2), by deleting paragraph (n).

10. Section 35 of the Income Tax Act is amended—

Amendment of s.
35 of Cap. 470.

(a) in subsection (1),—

(i) by deleting paragraph (m);

(ii) by deleting paragraph (n) and substituting therefor the following new paragraph—

(n) insurance or reinsurance premium, except insurance or reinsurance premium paid in respect of aircraft.

(iii) by inserting the following new paragraph immediately after paragraph (n)—

(o) security services, cleaning and fumigation services, catering services offered outside hotel premises, transportation of goods (excluding air transport services), sales promotion, and marketing and advertising services.

(b) in subsection (3), by inserting the following new paragraph immediately after paragraph (j) –

(k) security services, cleaning and fumigation services, catering services offered outside hotel premises, transportation of goods (excluding air transport services), sales promotion, and marketing and advertising services.

11. The Income Tax Act is amended by repealing section 72D.

Repeal of s. 72D
of Cap. 470.

12. The First Schedule to the Income Tax Act is amended in Part I by inserting the following new paragraphs immediately after paragraph 56 –

Amendment of
the First Schedule
to Cap. 470.

57. The income of the National Housing Development Fund.

58. Income earned by an individual who is registered under the Ajira Digital Program for three years beginning 1st January 2020;

Provided that –

(a) the individual shall qualify for the exemption upon payment of registration fee of ten thousand shillings per annum; and

(b) the Cabinet Secretary shall, in consultation with the Cabinet Secretary for the ministry responsible for information communication technology, issue regulations for the better carrying out of this provision.

13. The Third Schedule to the Income Tax Act is amended—

Amendment of
the Third
Schedule to Cap.
470.

- (a) in Head A, by deleting the words “gross emoluments” appearing in paragraph 3 and substituting therefor the words “employee’s contribution”;
- (b) in Head B—
 - (i) by inserting the following new subparagraph immediately after subparagraph 2 (k) —
 - (l) in the case of a company operating a plastics recycling plant, fifteen percent for the first five years from the year of commencement of its operations.
 - (ii) by deleting subparagraph 3(o);
 - (iii) by inserting the following new subparagraph immediately after subparagraph 3(p)—
 - (q) in the case of security services, cleaning and fumigation services, catering services offered outside hotel premises, transportation of goods (excluding air transport services), sales promotion services, marketing and advertising services, twenty percent of the gross amount;
 - (iv) by inserting the following new subparagraph immediately after subparagraph 5(k) —
 - (l) in the case of security services, cleaning and fumigation services, catering services offered outside hotel premises, transportation of goods (excluding air transport services) sales promotion services, marketing and advertising services, five percent of the gross amount.
 - (v) by deleting paragraph 9 and substituting therefor the following new paragraph—

9. The rate of turnover tax shall be three percent of the gross receipts of the business of a taxable person under section 12C.

14. The Eighth Schedule to the Income Tax Act is amended by deleting paragraph 13 and substituting therefor the following new paragraph—

Amendment of
the Eighth
Schedule to Cap.
470.

13. Exemption

No gain or loss shall be included in the computation of income under section 3 (2) (f) in the case of a transfer of property that is necessitated by a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring of a corporate entity, where such transfer is —

- (a) a legal or regulatory requirement;
- (b) as a result of a directive or compulsory acquisition by the government;
- (c) an internal restructuring within a group which does not involve transfer of property to a third party; or
- (d) in the public interest and approved by the Cabinet Secretary.

PART III—VALUE ADDED TAX

15. Section 2 of the Value Added Tax Act is amended—

Amendment of s.
2 of No. 35 of
2013.

- (a) in the definition of “supply of imported services” by deleting the words “a person who is a registered person” and substituting therefor the words “any person”.
- (b) by inserting the following new definition in proper alphabetical sequence—
“concessional loan” means a loan with at least twenty-five percent grant element.

16. Section 5 of the Value Added Tax Act, 2013 is amended by inserting the following new subsections immediately after subsection (6)—

Amendment of s.
5 of No. 35 of
2013.

- (7) The provisions of subsection (1) shall be applicable to supplies made through a digital market place
- (8) For the purposes of this section, “digital market place” means a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means.

17. Section 12 of the Value Added Tax Act, 2013, is amended in subsection (4) by inserting the words “or a special economic zone” immediately after the words “export processing zone” appearing in paragraph (c).

Amendment of s.
12 of No. 35 of
2013.

18. The First Schedule to the Value Added Tax Act, 2013 is amended—

Amendment of
the First Schedule
to No. 35 of 2013.

(a) in section A of Part I—

- (i) by inserting the words “upon the recommendation of the Cabinet Secretary responsible for matters relating to energy” at the end of paragraph 45;
- (ii) by inserting the words “other than road tractors for semitrailers” immediately after the word “tractor” appearing in paragraph 47;
- (iii) by inserting the following new paragraphs immediately after paragraph 104—

105. Inputs for electric accumulators and separators including lead battery separator rolls, whether or not rectangular or square, supplied to manufacturers of automotive and solar batteries in Kenya, upon the recommendation of the Cabinet Secretary for the time being responsible for industrialization.

106. Agricultural pest control products.

107. Locally manufactured motherboards.

108. Inputs for the manufacture of motherboards approved by the Cabinet Secretary responsible for information communication technology.

109. Plant, machinery and equipment used in the construction of a plastics recycling plant.

110. 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.

(b) in Part II by deleting the words “stock exchange brokerage” appearing in paragraph 10 and substituting therefor the words “securities brokerage services”;

19. The Second Schedule to the Value Added Tax Act, 2013, is amended –

Amendment of
Second Schedule
to No. 35 of 2013.

(a) by deleting paragraph 13B ;

(b) by deleting paragraph 18

(c) by inserting the following new paragraph in proper sequence —

19. The supply of denatured ethanol.

PART IV—EXCISE DUTY

20. Section 2 of the Excise Duty Act, 2015, is amended by inserting the following new definitions in proper alphabetical sequence—

Amendment of s.
2 of No. 23 of
2015.

“betting” shall have the meaning assigned to it under the Betting, Lotteries and Gaming Act;

Cap. 131.

“bookmaker” shall have the meaning assigned to it under section 2 of the Betting, Lotteries and Gaming Act;

Cap 131

“concessional loan” means a loan with at least twenty-five percent grant element;

“official aid funded project” means a project funded by means of a grant or concessional loan in accordance with an agreement between the Government and any foreign government, agency, institution, foundation, organization or any other aid agency;

21. Section 4 of the Excise Duty Act, 2015, is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of s.
4 of No. 23 of
2015.

(1A) In relation to a betting transaction, the time of supply shall be the time a person wagers or stakes money on a platform or other medium provided by a bookmaker.

22. The Excise Duty Act, 2015 is amended by inserting the following section immediately after section 41—

Insertion of s.
41A of No. 23 of
2015.

General penalty.

41A. A person who contravenes any provision of this Act or any regulation made thereunder for which no specific penalty is provided commits an offence and shall be liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding two years, or to both.

23. The First Schedule to the Excise Duty Act, 2015 is amended—

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

(a) in paragraph 1 of Part I—

(i) by deleting the rates of excise duty in respect of the descriptions set out in the first column hereunder and substituting therefor the new rates respectively specified in the second column—

<i>Description</i>	<i>Rate of Excise</i>
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Shs. 12,098 per kg
Electronic cigarettes	Shs. 3,629 per unit
Cartridge for use in electronic cigarettes	Shs. 2,420 per unit
Cigarette with filters (Hinge lid and soft cap)	Shs. 3,025 per mille
Cigarettes without filters (plain cigarettes)	Shs. 2,177 per mille
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	Shs. 8,469 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Shs. 181 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10%	Shs. 242 per litre

- (ii) by deleting the descriptions relating to motor vehicles together with the corresponding rates of excise duty and substituting therefor the following –

<i>Description</i>	<i>Rate of Excise Duty</i>
Motor vehicles of tariff heading 87.02, 20% 87.03 and 87.04 excluding –	
(i) locally assembled motor vehicles;	
(ii) school buses for use by public schools;	
(iii) motor vehicles of tariff no. 8703.24.90 and 8703.33.90; and	
(iv) imported motor vehicles of cylinder capacity exceeding 1500cc	

Description

*Rate of
Excise Duty*

Imported motor vehicles of cylinder capacity exceeding 1500cc of tariff heading 87.02, 87.03 and 87.04 25%.

Motor vehicles of tariff no. 8703.24.90 and 8703.33.90 35%

100% electric powered motor vehicles of tariff no. 8702.40.11, 8702.40.19, 8702.40.21, 8702.40.22, 8702.40.29, 8702.40.91, 8702.40.99 and 8703.80.00 10%.

(iii) by deleting the description “plastic shopping bags” and the corresponding rate of excise duty;

(b) in Part II, by inserting the following new paragraph immediately after paragraph 4—

5. Excise duty on betting shall be ten percent of the amount wagered or staked.

(c) in Part III—

(i) by deleting the word “July” appearing in the definition of “Adjustment day” and substituting therefor the word “October”;

(ii) by inserting the words “specified in the Insurance Act or Regulations” made thereunder at the end of the definition of “other fees”;

(iii) by inserting the following new definition in proper alphabetical sequence—

“amount wagered or staked” means the amount of money placed by a person for an outcome in a betting transaction.

PART V—TAX PROCEDURES

24. Section 12 of the Tax Procedures Act, 2015 is amended by inserting the following new subsection immediately after subsection (5)—

Amendment of s.
12 of No. 29 of
2015.

(5A) The Commissioner may, upon receipt of an application made by or on behalf of any person or class of persons, exempt such person or class of persons from the requirement for a PIN for any of the transactions specified in the First Schedule.

25. The Tax Procedures Act, 2015 is amended by inserting the following new section immediately after section 37B—

Insertion of new
section 37C in No.
29 of 2015.

Commissioner to refrain from assessing or recovering penalties or interest from companies that list on the growth segment.

37C. (1) Notwithstanding any other provision of this Act, the Commissioner shall refrain from assessing or recovering penalties or interest from a company that lists on the growth segment of a securities exchange in Kenya, in respect of any year of income prior to the date of listing where the company makes full disclosure of its past income, assets and liabilities for the two years immediately preceding the date of listing:

Provided that the principal tax shall be paid in full.

(2) This section shall not apply in respect of any tax where the person who should have paid the tax—

- (a) has been assessed in respect of the tax or any matter relating to the tax; or
- (b) is under audit or investigation in respect of the undisclosed income or any matter relating to the undisclosed income.

(3) Notwithstanding subsection (1), a company that delists from the exchange in which it is listed before the expiry of five years from the date of listing shall be assessed for all taxes, penalties or interest

for the years it was in operation prior to listing.

(4) The provisions of subsection (1) shall cease to apply after three years from the commencement of this section.

26. The Tax Procedures Act, 2015 is amended by inserting the following new section immediately after section 39—

Insertion of new section 39A in No. 29 of 2015.

Penalty for failure to deduct or withhold tax.

39A. Where a person who is required under a tax law to deduct or withhold tax and remit the tax to the Commissioner fails to do so, the provisions of this Act relating to the collection and recovery of tax, and the payment of penalties and interest thereon, shall apply to the collection and recovery of that tax not deducted or withheld as if it were tax due and payable by that person and the due date for the payment shall be the date on which the amount of tax should have been remitted to the Commissioner.

27. Section 42A of the Tax Procedures Act, 2015 is amended in subsection (1)—

Amendment of s. 42A of No. 29 of 2015.

(a) by deleting the expression “six percent” and substituting therefor the expression “two percent”;

(b) by inserting the following proviso—

Provided that the withholding tax shall not apply to the taxable value of zero-rated supplies.

28. Section 45 of the Tax Procedures Act, 2015 is amended—

Amendment of s. 45 of No. 29 of 2015.

(a) in subsection (1), by inserting the words “or tax representative” at the end of paragraph (b);

(b) in subsection (2), by inserting the words “or tax representative” at the end of paragraph (b);

(c) in subsection (7) —

(i) by inserting the words “or tax representative” at the end of paragraph (a);

(ii) by inserting the words “or tax representative” at the end of paragraph (b).

29. Section 51 of the Tax Procedures Act, 2015 is amended by deleting subsection (11) and substituting therefor the following new subsection –

Amendment of s.
51 of No. 29 of
2015.

(11) The Commissioner shall make the objection decision within sixty days from the date of receipt of—

(a) the notice of objection; or

(b) any further information the Commissioner may require from the taxpayer,

failure to which the objection shall be allowed.

30. Section 83 of the Tax Procedures Act, 2015 is amended by inserting the following proviso to subsection (1) –

Amendment of s.
83 of No. 29 of
2015.

Provided that in the calculation of the late submission penalty for purposes of this section, the amount of tax payable or due under the return shall be reduced by the amounts already paid and withholding tax credits.

31. Section 84 of the Tax Procedures Act, 2015 is amended in subsection (2) by deleting paragraph (b).

Amendment of s.
84 of No. 29 of
2015.

32. The First Schedule to the Tax Procedures Act, 2015 is amended by inserting the following new paragraphs immediately after paragraph 11 –

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

(12) Registration and renewal of membership by professional bodies and other licensing agencies.

(13) Registration of mobile cellular pay bill and till numbers by telecommunication operators.

PART VI—MISCELLANEOUS FEES AND LEVIES

33. Section 2 of the Miscellaneous, Fees and Levies Act, 2016 is amended by inserting the following definition in proper alphabetical sequence—

Amendment of s.
2 of No. 29 of
2016.

“concessional loan” means a loan with at least twenty-five percent grant element.

34. Section 7 of the Miscellaneous, Fees and Levies Act, 2016 is amended in subsection (2) by –

Amendment of s.
7 of No. 29 of
2016.

(a) deleting the word “two” appearing immediately after the words “rate of” and substituting therefor the words “three point five

(b) inserting the following proviso at the end –

Provided that raw materials and intermediate products imported by approved manufacturers shall be charged import declaration fee of at the rate of one-point five percent of the customs value

35. Section 8 of the Miscellaneous, Fees and Levies Act, 2016 is amended in subsection (2) by –

Amendment of s.
8 of No. 29 of
2016.

(a) deleting the words “one point five” appearing immediately after the words “rate of” and substituting therefor the word “two”

(b) inserting the following proviso at the end –

Provided that raw materials and intermediate products imported by approved manufacturers shall be charged the levy at the rate of one-point five percent of the customs value.

36. Section 8A of the Miscellaneous Fees and Levies Act, 2016 is amended by inserting the following new subsection immediately after subsection (2) –

Amendment of s.
8A of No. 29 of
2016.

(3) The Commissioner shall refund the levy on the written application of an importer where the Commissioner is satisfied that the levy was paid in respect of illuminating kerosene that has subsequently been used by a licensed or registered manufacturer to manufacture paint, resin or shoe polish.

37. The First Schedule to the Miscellaneous Fees and Levies Act, 2016 is amended by inserting the following new items in proper sequence –

Amendment of the
First Schedule to
No. 29 of 2016.

<i>Tariff No.</i>	<i>Tariff description</i>	<i>Export levy rate</i>
4104.11.00	Full grains, unsplit; grain splits tanned or crust hides of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared in the wet state (including wet-blue)	10%
4104.41.00	Full grains, unsplit; grain splits of Tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared in the dry state (crust) in the dry state (crust)	10%
4104.49.00	Other tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared in the dry state (crust) in the dry state (crust)	10%
4105.10.00	Tanned or crust skins of sheep or lambs, without wool on, whether or not split, but not further prepared in the wet state (including wet-blue)	10%
4105.30.00	Tanned or crust skins of sheep or lambs, without wool on, whether or not split, but not further prepared in the dry state (crust)	10%
4106.21.00	Tanned or crust goats or kids hides and skins of other animals, without wool on or hair on, whether or not split, but not further prepared in the wet state (including wet-blue)	10%
4106.22.00	Tanned or crust goats or kids hides and skins of other animals,	10%

<i>Tariff No.</i>	<i>Tariff description</i>	<i>Export levy rate</i>
	without wool on or hair on, whether or not split, but not further prepared in the dry state (crust)	
4106.31.00	Tanned or crust swine hides and skins of other animals, without wool on or hair on, whether or not split, but not further prepared in the wet state (including wet-blue)	10%
4106.32.00	Tanned or crust swine hides and skins of other animals, without wool on or hair on, whether or not split, but not further prepared in the dry state (crust)	10%
4106.40.00	Tanned or crust hides and skins of other animals, without wool on or hair on, whether or not split, but not further prepared reptiles in the dry state (crust)	10%
4106.91.00	Other tanned or crust hides of other animals, without wool on or hair on, whether or not split, but not further prepared in the wet state (including wet-blue)	10%
4106.92.00	Other tanned or crust hides and skins of other animals, without wool or hair on, whether or not split, but not further prepared in the dry state (crust)	10%

PART VII—MISCELLANEOUS

38. The Fourth Schedule to the Privileges and Immunities Act is amended in paragraph 4 by deleting the words “importation of goods directly imported” and substituting therefor the words “goods or services imported or purchased locally”.

Amendment of
Fourth Schedule
to Cap. 179.

39. Section 2 of the Capital Markets Act is amended by deleting the words “and chief financial officers and

Amendment of s.
2 of Cap. 485A.

Board of Directors of issuers of securities” appearing in paragraph (a) of the definition of “key personnel”.

40. Section 11 of the Capital Markets Act is amended in subsection (3) (cc) by inserting the following proviso to subparagraph (i) of subparagraph (cc)—

Amendment of s.
11 of Cap. 485A.

Provided that the financial penalties shall be recoverable summarily by the Authority as civil debts.

41. Section 25A of the Capital Markets Act is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of s.
25A of Cap.
485A.

(1A) The financial penalties and recoveries set out under paragraphs (1) (a) (v) and (vii), (1) (b) (iii) and (iv), (1) (c) (ii) and (iii), (2) and (6) shall be recoverable summarily by the Authority as civil debts.

42. Section 34A of the Capital Markets Act is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of s.
34A of Cap.
485A.

(1A) The financial penalties imposed under subsections (1) and (2) shall be recoverable summarily by the Authority as civil debts.

43. The Banking Act is amended by repealing section 33B.

Repeal of s. 33B
of Cap. 488.

44. Section 2 of the Standards Act is amended by inserting the following new definition in the proper alphabetical sequence—

Amendment of s.2
of Cap. 496

“consolidator” means a person who assembles cargo belonging to various persons to form one consignment which may be declared as belonging to one importer at the port of destination and de-consolidated back into the original individual consignments for delivery to the respective cargo owners upon arrival at the destination port or consolidators warehouse.

45. The Standards Act is amended by inserting the following new section immediately after section 14B—

Insertion of s. 14c
in Cap. 496

Registration of cargo
consolidators.

14C. (1) The Bureau shall in consultation with the Kenya Revenue Authority vet and register all consolidators of air and sea cargo prior to importation of cargo into the country by a consolidator.

(2) A company shall be qualified to be registered as a cargo consolidator, if the company—

- (a) is tax compliant;
- (b) is a member in good standing with a recognised association for consolidators;
- (c) has warehouse in the country of origin and country of destination;
- (d) has not committed any offence relating to importation of substandard or counterfeit goods in the last three years.

(3) A company seeking to be registered as a consolidator shall apply to the Bureau in the manner prescribed by the Cabinet Secretary.

(4) A company which imports cargo as a consolidator without being registered as required under this section commits an offence and shall upon conviction be liable to a fine of not exceeding one million shillings or imprisonment for a term not exceeding one year, or to both

46. Section 37 of the Retirement Benefits Act is amended by inserting the following new subsection immediately after subsection (3) —

Amendment of s.
37 of No. 3 of
1997.

(4) Where scheme funds are invested in a guaranteed fund asset class, the approved issuer shall, upon termination of the relevant agreement, transfer the funds out of the asset class within

twelve months, or such other shorter period as may be specified in the instrument of appointment.

47. The Retirement Benefits Act is amended by repealing section 45A and replacing it with the following new section—

Repeal and replacement of s. 45A of No. 3 of 1997.

Treatment of unclaimed benefits.

No. 40 of 2011.

45A. (1) If within a period of two years from the completion of winding up proceedings in respect of a scheme under the Act, the liquidator is unable to trace any member of the scheme, the accrued benefits due to such member shall become unclaimed assets within the meaning of section 13 (1) of the Unclaimed Financial Assets Act, 2011, at the end of that period.

(2) At the end of the period specified in subsection (1), a trustee of the scheme may treat accrued benefits as unclaimed benefits if—

(a) a scheme member entitled to such accrued benefits has not lodged any claim and the trustee is unable to locate that member after taking the specified steps;

(b) a scheme member has lodged a claim with the trustee but the trustee is subsequently unable to locate that member after taking the specified steps; and

(c) the member or beneficiary has not—

(i) increased or decreased the principal;

(ii) accepted any payment in respect of the accrued benefits;

(iii) communicated with the scheme concerning the accrued benefits; or

- (iv) indicated any other interest in the accrued benefits as evidenced by a record prepared by the trustees.

48. Section 2 of the Employment Act, 2007 is amended by—

Amendment of s.
2 of No. 11 of
2007.

- (a) deleting the definition of “employee earnings”;
- (b) inserting the following new definition in proper alphabetical sequence—

“basic salary” means an employee’s gross salary excluding allowances and other benefits.

49. Section 17 of the Accountants Act, 2008 is amended by repealing subsection (2A).

Amendment of s.
17 of No. 15 of
2008.

50. Section 2 of the Proceeds of Crime and Anti-Money Laundering Act, 2009 is amended in the definition of “designated non-financial businesses and professions” by inserting the following new paragraph immediately after paragraph (fa)—

Amendment of s.
2 of No. 9 of
2009.

(fb) advocates, notaries and other independent legal professionals who are sole practitioners, partners or employees within professional firms.

51. Section 48 of the Proceeds of Crime and Anti-Money Laundering Act, 2009 is amended by inserting the words “advocates, notaries and other independent legal professionals” immediately after the word “accountants” appearing in the preamble.

Amendment of s.
48 of No. 9 of
2009.

MEMORANDUM OF OBJECTS AND REASONS

This Bill has been submitted by the Cabinet Secretary for the National Treasury and Planning and formulates the proposals announced in the Budget for 2019/2020 relating to liability to, and collection of taxes, and for matters incidental thereto.

The Bill also seeks to amend the following laws—

The Privileges and Immunities Act (Cap. 179)

The Bill seeks to amend the Fourth Schedule to the Act to exempt goods and services imported or locally purchased by privileged organisations for their official use from taxes.

The Capital Market Act (Cap. 485)

The Bill seeks to amend the Act to provide for financial penalties imposed by the Authority to be considered as civil debts with the Capital Markets Authority mandated to recover them in line with provisions for the recovery of decretal sums. The amendment is intended to enhance enforcement and recovery of financial penalties imposed by the Authority.

The Banking Act (Cap. 488)

The Bill seeks to amend the Act by repealing section 33B to remove the caps on interest charged on loans. This is aimed at encouraging the banks to provide credit to Small and Medium Enterprises (SMEs).

The Standards Act (Cap. 496)

The Bill seeks to amend the Act to provide for registration of consolidators of air and sea cargo.

The Retirements Benefits Act (No. 3 of 1997)

The Bill proposes to activate the benefits and other accrued income of members of retirement benefits schemes who cannot be traced and that were rendered redundant with the enactment of the Unclaimed Financial Assets Act, 2011. The amendment also intends to provide time limit in which approved issuers shall transfer scheme funds in guaranteed funds to 1 year to protect the interests of members by reducing the exposure to low returns over an extended transfer period.

The Employment Act (No. 11 of 2008)

The Bill seeks to introduce the definition of “basic salary” to guide on the base amount for computing the levy payable to the National Housing Development Fund. The amendment also seeks to delete the definition of “employee’s earnings”, words which have not been used in the Act.

The Accountants Act (No. 15 of 2008)

The Bill proposes to remove the requirement for the students to register with ICPAK before qualifying as accountants.

The Proceeds of Crime and Anti-Money Laundering Act (No. 9 of 2009)

The Bill seeks to designate lawyers, notaries and other independent legal professionals as amongst reporting entities to whom Anti-Money Laundering/Combating Financing of Terrorism obligations shall apply.

Dated the 27th June, 2019.

J. K. LIMO,
*Chairperson, Departmental Committee,
on Finance and National Planning.*

The Income tax Act, (Cap. 470)

Section 2 of Cap 470 which is intended to be amended-

“demurrage charges” means the penalty paid for exceeding the period allowed for taking delivery of goods, or returning of any equipment used for transportation of goods;

Section 3 of Cap 470 which is intended to be amended-

(1) Subject to, and in accordance with, this Act, a tax to be known as income tax shall be charged for each year of income upon all the income of a person, whether resident or non-resident, which accrued in or was derived from Kenya.

(2) Subject to this Act, income upon which tax is chargeable under this Act is income in respect of—

(a) gains or profits from—

(i) any business, for whatever period of time carried on;

(ii) any employment or services rendered;

(iii) any right granted to any other person for use or occupation of property;

(b) dividends or interest;

(c) (i) a pension, charge or annuity; and

(ii) any withdrawals from, or payments out of, a registered pension fund or a registered provident fund or a registered individual retirement fund; and

(iii) any withdrawals from a registered home ownership savings plan;

(d) *deleted by Act No. 14 of 1982, s. 17;*

(e) an amount deemed to be the income of any person under this Act or by rules made under this Act;

(f) gains accruing in the circumstances prescribed in, and computed in accordance with, the Eighth Schedule;

(g) subject to section 15(5A), the net gain derived on the disposal of an interest in a person, if the interest derives twenty per cent or more of its value, directly or indirectly, from immovable property in Kenya; and

(h) a natural resource income.

(3) For the purposes of this section—

- (a) "person" does not include a partnership;
- (b) a bonus or interest paid by a designated cooperative society, as defined under section 19A, shall be deemed to be a dividend;
- (c) for the purposes of subsection (2) (g) and section 15(5A) —
 - (i) "immovable property" means a mining right, an interest in a petroleum agreement, mining information or petroleum information;
 - (ii) "net gain" in relation to the disposal of an interest in a person, means the consideration for the disposal reduced by the cost of the interest; and
 - (iii) the terms "consideration", "cost", "disposal", "interest in a person", "mining information", "mining right", "person", "petroleum agreement", and "petroleum information" have the meaning assigned to them in the Ninth Schedule.

Section 7A of Cap 470 which is intended to be amended—

Where a dividend is distributed out of gains or profits on which no tax is paid, the company distributing the dividend shall be charged to tax in the year of income in which the dividends are distributed at the resident corporate rate of tax on the gains or profits from which such dividends are distributed:

Provided that this section shall not apply to registered collective investment schemes.

Section 9 of Cap 470 which is intended to be amended—

(1) Where a non-resident person carries on the business of shipowner, charterer or air transport operator and any ship or aircraft owned or chartered by him calls at any port or airport in Kenya, the gains or profits from such business from the carriage of passengers who embark, or cargo or mail which is embarked, in Kenya shall be the gross amount received on account of the carriage and those gains or profits shall be deemed to be income derived from Kenya; but this subsection shall not apply to gains or profits from the carriage of passengers who embark, or cargo or mail which is embarked, in Kenya solely as a result of transshipment.

(2) Where a non-resident person carries on, in Kenya, the business of transmitting messages by cable, radio, optical fibre, television broadcasting, Very Small Aperture Terminal (VSAT), internet, satellite or by any other similar method of communication, then the gains or profits

from the business shall be the gross amount received for the transmission of messages which are transmitted by the apparatus established in or outside Kenya, whether or not those messages originate from Kenya, and such gains and profits shall be deemed to be income derived from Kenya.

Section 10 of Cap 470 which is intended to be amended—

(1) For the purposes of this Act, where a resident person or a person having a permanent establishment in Kenya makes a payment to any other person in respect of—

- (a) a management or professional fee or training fee;
- (b) a royalty or natural resource income;
- (c) interest and deemed interest;
- (d) the use of property;
- (e) an appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience; or
- (f) an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (e) of this section;
- (g) winnings;
- (h) *deleted by Act No. 16 of 2014, s. 6(b),*
- (i) demurrage charges; and
- (j) an insurance premium.

the amount thereof shall be deemed to be income which accrued in or was derived from Kenya:

Provided that—

- (i) this subsection shall not apply unless the payment is incurred in the production of income accrued in or derived from Kenya or in connexion with a business carried on or to be carried on, in whole or in part, in Kenya;
- (ii) this subsection shall not apply to any such payment made, or purported to be made, by the permanent establishment in Kenya of a non-resident person to that non-resident person;
- (iii) for the avoidance of doubt, the expression "non-resident person" shall include both head office and other offices of the non-resident person.

(2) A net gain referred to in section 3(2) (g) is deemed to be income that accrued in or was derived from Kenya.

Section 12C of Cap 470 which is intended to be amended—

(1) Notwithstanding any other provision of this Act, a tax to be known as presumptive tax shall be payable by a resident person whose turnover from business does not exceed five million shillings during a year of income.

(2) The presumptive tax shall apply to persons who are issued or liable to be issued with a business permit or trade license by a county government in a year of income.

(3) A person liable to pay tax under subsection (1) may, by notice in writing, addressed to the Commissioner, elect not to be subject to the provisions of this section in which case the other provisions of this Act shall apply to such person.

(4) The due date for payment of tax under subsection (1) shall be at the time of payment for the business permit or trade license or renewal of the same.

(5) Notwithstanding subsection (1), presumptive tax shall not apply to income derived from —

- (a) management and professional services; or
- (b) rental business; or
- (c) incorporated companies.

Section 20 of Cap 470 which is intended to be amended—

(1) Subject to such conditions as may be specified by the Minister under section 1 —

- (a) a unit trust; or
- (b) a collective investment scheme set up by an employer for purposes of receiving monthly contributions from taxed emoluments of his employees and investing them primarily in shares traded on any securities exchange operating in Kenya;
- (c) a real estate investment trust, registered by the Commissioner, shall be exempt from income tax except for the payment of withholding tax on interest income and dividends as a resident person as specified in the Third Schedule to the extent that its unit holders or shareholders are not exempt persons under the First Schedule.

(2) All distributions of income, and all payments for redemption of units of sale of shares received by unit holders or shareholders shall be deemed to have been already tax paid.

Section 34 of Cap 470 which is intended to be amended—

(1) Subject to this section—

- (a) tax upon the total income of an individual, other than that part of the total income comprising wife's employment income fringe benefits and the qualifying interest, shall be charged for a year of income at the individual rates for that year of income;
- (b) tax upon that part of the total income which consists of wife's employment income, wife's professional income rate and wife's self-employment income rate other than income arising from fringe benefits shall be charged for a year of income at the wife's employment income rate, wife's professional income rate and wife's self-employment income rate, as the case may be, for that year of income;
- (c) tax upon that part of the total income of an individual that comprises the qualifying interest shall be charged for a year of income at the qualifying interest rate of tax for that year of income;
- (d) tax upon that part of the total income of a person that comprises the qualifying dividends shall be charged for a year of income at the qualifying dividend rate of tax for that year of income;
- (e) tax upon the total income of a person other than an individual shall be charged at the corporation rate for that year of income;
- (f) tax upon that part of total income that comprises dividends other than qualifying dividends shall be charged in a year of income at the resident withholding rate in respect of a dividend specified in the Third Schedule;
- (g) tax upon the total fringe benefits provided by an employer shall be charged at the resident corporation rate for that year of income;
- (h) tax upon gross receipts of a person chargeable to tax under section 12C shall be charged at the resident rate for that year of income;
- (i) *deleted by Act No. 14 of 2015, s. 11;*

- (j) tax upon the capital gains of a person charged under section 3(2)(f) shall be charged at the rate of five percent and shall not be subject to further taxation;
- (k) tax upon gross rental receipts of a person chargeable to tax under section 6A shall be charged at the resident rate specified under the Third Schedule for that year of income;
- (l) the transfer of interest in a person shall be charged as per provisions of the Ninth Schedule;
- (m) winnings;

(1A) *Deleted by Act No. 16 of 2014, s. 10(b).*

(1B) *Deleted by Act No. 16 of 2014, s. 10(b).*

(2) Tax upon the income of a non-resident person not having permanent establishment in Kenya which consists of—

- (a) a management or professional fee;
- (b) a royalty or natural resource income;
- (c) a rent, premium or similar consideration for the use or occupation of property;
- (d) a dividend;
- (e) interest;
- (f) a pension or retirement annuity;
- (g) any payment in respect of any appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience; or
- (h) any payment in respect of an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (g) of this subsection;
- (i) winnings;
- (j) a payment in respect of gains or profits from the business of transmitting messages which is chargeable to tax under section 9(2);

(k) *deleted by Act No. 14 of 2015, s. 11(b)(i);*

shall be charged at the appropriate non-resident rate in force at the date of payment of such income and shall not be charged to tax under subsection (1).

(3) *Repealed by Act No. 8 of 1978, s. 9.*

(4) In this section “**person**” does not include a partnership.

Section 35 of Cap 470 which is intended to be amended—

(1) Every person shall, upon payment of any amount to any non-resident person not having a permanent establishment in Kenya in respect of—

(a) a management or professional fee or training fee except—

(i) a commission paid to a non-resident agent in respect of flowers, fruits or vegetables exported from Kenya and auctioned in any market outside Kenya and audit fees for analysis of maximum residue limits paid to a non-resident laboratory or auditor; or

(ii) a commission paid by a resident air transport operator to a nonresident agent in order to secure tickets for international travel;

(b) a royalty or natural resource income;

(c) a rent, premium or similar consideration for the use or occupation of property, except aircraft or aircraft engines, locomotives or rolling stock:

Provided that—

(i) where the bond, loan, claim, obligation or other evidence of indebtedness is acquired by a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule from a non-resident person, such an exempt person or financial institution shall deduct tax from the difference between the acquisition price and the original issue price; and

(ii) where a non-resident person disposes of a bond, loan, claim, obligation or other evidence of indebtedness acquired from a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule, tax shall be deducted upon final redemption from the difference between the final redemption price and the acquisition price, if the exempt person or financial institution certifies the acquisition price to the satisfaction of the Commissioner;

(d) a dividend;

(e) interest and deemed interest;

(f) a pension or retirement annuity:

Provided that for the purposes of this paragraph, contractual fee within the meaning of “**management or professional fee**” shall mean payment for work done in respect of building, civil or engineering works;

(g) any appearance at, or performance in, a place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience; or

(h) any activity by way of supporting, assisting or arranging any appearance or performance referred to in paragraph (g) of this subsection, which is chargeable to tax, deduct therefrom tax at the appropriate non-resident rate;

(i) winnings;

(j) *deleted by Act No. 38 of 2016, s. 9(a);*

(k) *deleted by Act No. 16 of 2014, s. 11;*

(l) gains or profits from the business of transmitting messages which is chargeable to tax under section 9(2);

(m) demurrage charges;

(n) an insurance premium except insurance premium paid for insurance of aircraft;

(1A) Subsection (1) shall not apply to payments made by filming agents and filming producers approved by the Kenya Film Commission to actors and crew members approved for purposes of paragraphs (g) and (h).

(2) *Deleted by Act No. 8 of 1978, s. 9(1)(ii).*

(3) Subject to subsection (3A), a person shall, upon payment of an amount to a person resident or having a permanent establishment in Kenya in respect of—

(a) a dividend; or

(b) interest, other than interest paid to a financial institution specified in the Fourth Schedule which is resident or which has a permanent establishment in Kenya, including interest arising from a discount upon final satisfaction or redemption of a debt, bond, loan, claim, obligation or other evidence of indebtedness measured as the original issue discount, other than interest or discounts paid to a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule:

Provided that—

- (i) where the bond, loan, claim, obligation or other evidence of indebtedness is acquired by a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule from the resident person, such an exempt person or financial institution shall deduct tax from the difference between the acquisition price and the original issue price; and
 - (ii) where the resident person disposes of a bond, loan, claim, obligation or other evidence of indebtedness acquired from a person exempt under the First Schedule or a financial institution specified in the Fourth Schedule, tax shall be deducted upon final redemption from the difference between the final redemption price and the acquisition price, if the exempt person or financial institution certifies the acquisition price to the satisfaction of the Commissioner;
- (c) an annuity payment excluding that portion of the payment which represents the capital element; or
- (d) a commission or fee paid or credited by an insurance company to any person for the provision, whether directly or indirectly, of an insurance cover to any person or group of persons (except a commission or fee paid or credited to another insurance company);
- (e) a pension or a lump sum commuted or withdrawn from a registered pension fund or a lump sum out of a registered provident fund in excess of the tax exempt amounts specified in section 8(4) and (5), or any amount paid out of a registered individual retirement fund, or a benefit paid out of the National Social Security Fund in excess of the tax exempt amount specified in section 8(5); or
- (ee) surplus funds withdrawn from or paid out of registered pension or provident funds;
- (f) management or professional fee or training fee, the aggregate value of which is twenty-four thousand shillings or more in a month:

Provided that for the purposes of this paragraph, contractual fee within the meaning of “**management or Professional fee**” shall mean payment for work done in respect of building, civil or engineering works;

- (g) a royalty or natural resource income;
- (h) winnings;
- (i) *deleted by Act No. 38 of 2016, s. 9 (b)(ii)*;
- (j) rent, premium or similar consideration for the use or occupation of immovable property.

(3A) Notwithstanding the provisions of subsection (3), only a person appointed for that purpose by the Commissioner, in writing, shall deduct tax under paragraph (j) of that subsection.

(3B) *Deleted by Act No. 16 of 2014, s. 11(c).*

(3C) *Deleted by Act No. 9 of 2007, s. 23.*

(4) No deduction shall be made under subsection (1) or (3) from a payment which is income exempt from tax under this Act, or to which an order made under this Act, or to which an order made under subsection (7) or (8) applies.

(5) Where a person deducts tax under this section he shall, on or before the twentieth day of the month following the month in which the deduction was made—

- (a) remit the amount so deducted to the Commissioner together with a return in writing of the amount of the payment the amount of tax deducted, and such other information as the Commissioner may specify; and
- (b) furnish the person to whom the payment is made with a certificate stating the amount of the payment and the amount of the tax deducted.

(5A) The Commissioner shall pay the tax deducted from winnings under subsection (1) (i) and (3) (h) into the Sports, Arts and Social Development Fund established under section 24 of the Public Finance Management Act, 2012.

(6) *Deleted by Act No. 38 of 2016, s. 9(d).*

(6A) Where any person who is required under subsection (3A) to deduct tax—

- (a) fails to make the deduction or fails to deduct the whole amount of the tax which he should have deducted; or
- (b) fails to remit the amount of any deduction to the Commissioner on or before the twentieth day of the month following the month in which such deduction was made or ought to have been made, any Collector of

Stamp Duties appointed under section 4 of the Stamp Duty Act (Cap. 480), shall stamp the instrument of which the property is the subject matter under the Stamp Duty Act, and Registrars of Title or Land Registrars appointed under any written law shall not register the property under any written law, until such tax has been duly accounted for:

Provided that the transferee of chargeable property may pay such tax and be entitled to recover the amount of the tax from any consideration for the transfer in his possession, by action in a court or by any other lawful means at his disposal.

(6B) *Deleted by Act No. 29 of 2015, 2nd Sch.*

(6C) Subject to subsection (6B), the provisions of this Act relating to appeals to local committees against assessment shall apply *mutatis mutandis* to appeals under this section.

(6D) A person aggrieved by the imposition, by the Commissioner, of a penalty under this section may, by notice in writing to the Commissioner, object to the imposition within thirty days of the date of service of the notice of the imposition.

(6E) The provisions of this Act in respect of objections shall, *mutatis mutandis*, apply to objections under this section.

(7) The Minister may, by notice in the *Gazette*, exempt from the provisions of subsection (3) of this section any payment or class of payments made by any person or class of persons resident or having a permanent establishment in Kenya.

(8) The Minister may, by notice in the *Gazette*, amend or add to the Fourth Schedule in respect of financial institutions resident or having a permanent establishment in Kenya.

Section 72D of Cap 470 which is intended to be amended—

Where any amount of tax remains unpaid after the due date a penalty of twenty per cent shall immediately become due and payable:

Provided that—

- (a) in the case where the instalment penalty under section 72C applies, the penalty under this section shall not apply except to the extent that any such instalment penalty has not been paid by the due date for self-assessment of tax under section 52B;
- (b) this section shall not apply in the case of penalties imposed for breach of any other provision of this Act.

First Schedule of Cap 470 which is intended to be amended—

EXEMPTIONS

PART I – INCOME ACCRUED IN, DERIVED FROM OR RECEIVED IN KENYA WHICH IS EXEMPT FROM TAX

Third Schedule of Cap 470 which is intended to be amended—

RATES OF PERSONAL RELIEF AND TAX

HEAD A – RESIDENT PERSONAL RELIEF

1. Personal Relief

The amount of the personal relief shall be sixteen thousand eight hundred and ninety six shillings:

Provided that for the year of income 1995, all the income over £19,500 shall be charged additional tax at the rate of one-half shilling in each twenty shillings.

[Act No. 38 of 2016, s. 17(a), Act No. 15 of 2017, s. 18(a).]

2. Insurance Relief

The amount of insurance relief shall be fifteen per cent of the amount of premiums paid but shall not exceed sixty thousand shillings per annum.

3. Affordable housing relief

The amount of affordable housing relief shall be 15% of the gross emoluments but shall not exceed Ksh. 108,000 per annum.

HEAD B – RATES OF TAX

2. The corporation rate of tax shall be—

(k) in the case of a company engaged in business under a special operating framework arrangement with the Government, the rate of tax shall be to the extent provided in the arrangement.

3. The non-resident tax rates shall be—

(o) demurrage charges, paid to ship operators, twenty per cent of the gross amount payable;

9. The rate of presumptive tax shall be an amount equal to fifteen percent of the amount payable for a business permit or trade licence issued by a County Government:

Provided that the tax charged shall be final.

Eight Schedule of Cap 470 which is intended to be amended—

ACCRUAL AND COMPUTATION OF GAINS FROM PROPERTY OTHER THAN INVESTMENT SHARES TRANSFERRED BY INDIVIDUALS

13. Exemption

(1) No gain or loss shall be included in the computation of income under section 3(2)(f) of this Act in the case of a transfer of property in exchange for other property that is necessitated by, and takes place pursuant to, a transaction involving the incorporation, recapitalization, acquisition, amalgamation, separation, dissolution or similar restructuring of corporate identity involving one or more companies (to the extent otherwise permitted by law) found by the Minister in his discretion to be in the public interest:

Provided that following all such exchanges, the cost of the property acquired by him shall be the cost of the property transferred, except that the cost to a company of property received by it in exchange for the issue of its own shares or debentures shall be the cost to the issuee of such property received.

(2) As a condition of making his finding that any one of the transactions referred to in subparagraph (1) of this paragraph is in the public interest the Minister may require one or more of the parties to the transaction to agree, for the purposes of this Act, as to the treatment of any charge, deduction or other item, present or future involved in or arising out of the transaction, including, without limitation, the treatment of property received as a dividend, the charge of a gain or loss to income, the cost or valuation of any property, the allocation of cost or value between different properties, and the accounting treatment of any item.

(3) Any agreement made pursuant to subparagraph (2) of this paragraph shall, for the purposes of this Act, be binding on the party and its successors in title, as to matters covered by the agreement.

The Value Added Tax(No.35 of 2013)

Section 2 of No.35 of 2013 which is intended to be amended—

“supply of imported services” means a supply of services that satisfies the following conditions—

- (a) the supply is made by a person who is not a registered person to a person who is a registered person;

- (b) the supply would have been a taxable supply if it had been made in Kenya; and
- (c) the registered person would not have been entitled to a credit for the full amount of input tax payable if the services had been acquired by the person in a taxable supply;

Section 12 of No. 35 of 2013 which is intended to be amended—

- (4) The time of supply of imported goods shall be—
 - (a) in the case of goods cleared for home use directly at the port of importation, or goods entered for removal to an inland station and there cleared for home use, at the time of customs clearance;
 - (b) in the case of goods removed to a licensed warehouse subsequent to importation, at the time of final clearance from the warehouse for home use;
 - (c) in the case of goods removed from an export processing zone, at the time of removal for home use;
 - (d) in any other case, at the time the goods are brought into Kenya.

First schedule of No. 35 of 2013 which is intended to be amended—

PART I – GOODS EXEMPT SUPPLIES SECTION A

The supply or importation of the following goods shall be exempt supplies

45. Specialized equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power.

47. Tractors.

PART II – SERVICES

The supply of the following services shall be exempt supplies—

18. Hiring, leasing and chartering of aircrafts.

The Excise Duty Act (No. 23 of 2015)

Section 4 of No. 23 of 2015 which it is intended to amend—

- 4. (1) The time of supply of excisable services shall be the earlier of—
 - (a) the date on which the services are performed;
 - (b) the date on which the invoice for the supply of the services is issued; or

- (c) the date on which payment for the supply of the services is received, in whole or part.

First schedule of No.23 of 2015 which it is intended to amend-

RATES OF EXCISE DUTY

1. Subject to paragraph 2, the rates of excise duty on excisable goods are as set out in the following table:

PART I — EXCISABLE GOODS

PART II — EXCISABLE SERVICES

PART III — INTERPRETATION OF SCHEDULE

“Adjustment day” means 1st day of July of every year;

“other fees” includes any fees, charges or commissions charged by financial institutions relating to their licensed financial institutions, but does not include interest on loan or return on loan or an insurance premium or premium based or related commissions;

The Tax Procedures Act (No. 29 of 2015)

Section 42A of No. 29 of 2015 which it is intended to amend-

(1) The Commissioner may appoint a person to withhold six per cent of the taxable value on purchasing taxable supplies at the time of paying for the supplies and remit the same directly to the Commissioner.

Section 45 of No. 29 of 2015 which it is intended to amend-

45. Departure prohibition order

(1) This section applies when the Commissioner has reasonable grounds to believe that a person may leave Kenya without paying—

- (a) a tax that is or will become payable by the person; or
- (b) a tax that is or will become payable by a company in which the person is a controlling member.

(2) The Commissioner may issue a departure prohibition order, in writing, to the Director in relation to a person to whom this section applies stating—

- (a) the name and address of the person; and
- (b) the amount of tax that is or will become payable by the person or by a company in which the person is a controlling member.

(3) The Commissioner shall, as soon as practicable after issuing a departure prohibition order under subsection (1), serve a copy of the order on the person named in the order.

(4) Where the Director has been issued with an order under this section, the Director or an officer authorised by the Director, shall, so far as is permitted by any other written law or this Act, shall prevent the person named in the order from departing Kenya, including by the confiscation and retention of the person's

passport, identity card, visa, or other travel document authorising the person to leave Kenya.

(5) A person who is the subject of a departure prohibition order shall not be granted customs or immigration clearance.

(6) A departure prohibition order shall remain in force until it is revoked by the Commissioner.

(7) The Commissioner shall revoke a departure prohibition order if—

- (a) the person named in the order pays in full the tax payable or that will become payable by that person or by a company in which that person is a controlling member; or
- (b) the person named in the order makes an arrangement satisfactory to the Commissioner for the payment of the tax that is or will become payable by that person or by a company in which that person is a controlling member.

Section 83 of No. 29 of 2015 which it is intended to amend-

83. (1) A person who submits a tax return after the due date shall be liable to a penalty—

- (a) of twenty five percent of the tax due or ten thousand shillings whichever is higher, if it is in relation to a return required to be submitted on account of employment income;
- (b) five thousand shillings if it is in relation to a return required to be submitted under Turnover Tax; or
- (c) five per cent of the amount of tax payable under the return or ten thousand shillings, whichever is the higher, if it is in relation to value added tax or excise duty;
- (d) in any other case—
 - (i) five per cent of the amount of tax payable under the return or twenty thousand shillings, whichever is the higher, in respect of a person other than an individual; or
 - (ii) five per cent of the amount of tax payable under the return or two thousand shillings, whichever is the higher, for an individual.

Section 84 of No. 29 of 2015 which it is intended to amend-

84. (2) Subject to subsections (3) and (4), a person to whom this section applies shall be liable to a tax shortfall penalty of—

- (a) seventy-five per cent of the tax shortfall when the statement or omission was made deliberately; or
- (b) twenty per cent of the tax shortfall in any other case.

First schedule of No. 29 of 2015 which it is intended to amend-

FIRST SCHEDULE

TRANSACTIONS FOR WHICH A PIN IS REQUIRED

- (1) Registration of titles and stamping of instruments.
- (2) Approval of development plans and payment of water deposits.
- (3) Registration of motor vehicles, transfer of motor vehicles, and licensing of motor vehicles.
- (4) Registration of business names.
- (5) Registration of companies.
- (6) Underwriting of insurance policies.
- (7) Trade licensing.
- (8) Importation of goods and customs clearing and forwarding.
- (9) Payment of deposits for power connections.
- (10) All contracts for the supply of goods and services to Government Ministries and public bodies.
- (11) Opening accounts with financial institutions and investment banks.

The Miscellaneous fees and levies (No. 29 of 2016)

Section 7 of No. 29 of 2016 which it is intended to amended—

7. (1) There shall be paid a fee to be known as the import declaration fee, on all goods imported into the country for home use.

(2) The fee shall be at the rate of two per cent of the customs value of the goods and shall be paid by the importer of such goods at the time of entering the goods for home use.

(3) Despite subsection (1)—

- (a) import declaration fee shall not be charged on the goods specified in Part A of the Second Schedule when imported or purchased before clearance through customs; or
- (b) goods imported under the East African Community Duty Remission Scheme shall be charged import declaration fee of ten thousand shillings at the time of entering the goods for home use.
- (4) An importer of goods other than goods specified in Part A of the Second Schedule shall complete the prescribed import declaration form.
- (5) An importer shall present a copy of the import declaration form completed under subsection (4) to the Commissioner at the time of entering the goods for home use.
- (6) Out of the fee collected under subsection (2), ten per cent shall be paid into a Fund established and managed in accordance with the Public Finance Management Act, 2012.
- (7) The monies in the Fund under subsection (6) shall be used for the payment of Kenya's contributions to the African Union and any other international organisation to which Kenya has a financial obligation.

Section 8 of No. 29 of 2016 which it is intended to amended—

8. (2) The levy shall be at the rate of one point five per cent of the customs value of the goods and shall be paid by the importer of such goods at the time of entering the goods into the country for home use.

Section 8A of No. 29 of 2016 which it is intended to amended—

8A. Anti-adulteration levy

(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.

First schedule of No. 29 of 2016 which it is intended to amended—

FIRST SCHEDULE

GOODS SUBJECT TO EXPORT LEVY

The Privileges and Immunities Act (Cap. 179)

Fourth schedule of Cap 179. which is intended to be amended—

FOURTH SCHEDULE

IMMUNITIES AND PRIVILEGES OF AN ORGANIZATION AND OFFICERS THEREOF

PART I

Immunities and Privileges of the Organization

1. Immunity from suit and legal process.

2. The like inviolability of premises occupied as offices and of official archives as is accorded by Articles 22 and 24 of the First Schedule to this Act.

3. The like exemption from rates and taxes, other than taxes on the importation of goods, as is accorded to a mission by the First Schedule.

4. Exemption from taxes on the importation of goods directly imported by the organization for its official use in Kenya or for exportation, or on the importation of any publications of the organization directly imported by it, such exemption to be subject to compliance with such conditions as any written law relating to customs and excise may prescribe.

5. Exemptions from prohibitions and restrictions on importation or exportation in the case of goods directly imported or exported by the organization for its official use and in the case of any publications of the organization directly imported or exported by it.

6. The right to avail itself, for telegraphic communications sent by it and containing only matter intended for publication by the Press or for wireless broadcasting (including communications addressed to, or despatched from, places outside Kenya), of any reduced rates applicable for the corresponding service in the case of Press telegrams.

The Capital Market Act (Cap. 485)

Section 2 of Cap. 485 which is intended to be amended -

“key personnel” means a person who manages or controls the activities of a licensed or a regulated person and includes—

- (a) the chief executive officer, chief financial officer, chief compliance officer, secretary to the Board, chief internal auditor, or any manager; and
- (b) any person who holds a position or discharges responsibilities of any person referred to in paragraph (a);

Section 11 of Cap. 485 which is intended to be amended -

11. (3) For the purpose of carrying out its objectives, the Authority may exercise, perform or discharge all or any of the following powers, duties and functions—

- (a) advise the Minister on all aspects of the development and operation of capital markets;
- (b) implement policies and programmes of the Government with respect to the capital markets;
- (c) employ such officers and servants as may be necessary for the proper discharge of the functions of the Authority;
- (cc) impose sanctions for breach of the provisions of this Act or the regulations made thereunder, or for non-compliance with the Authority's requirements or directions, and such sanctions may include—
 - (i) levying of financial penalties, proportional to the gravity or severity of the breach, as may be prescribed;
 - (ii) ordering a person to remedy or mitigate the effect of the breach, make restitution or pay compensation to any person aggrieved by the breach;
 - (iii) publishing findings of malfeasance by any person;
 - (iv) suspending or cancelling the listing of any securities or exchange-traded derivatives contracts, or the trading of any securities or exchange-traded derivatives contracts, for the protection of investors;

Section 25A of Cap. 485 which is intended to be amended -

25A. (1) Without prejudice to any other provision of this Act, the Authority may impose the following sanctions or levy financial penalties in accordance with this Act, for the breach of any provisions of this Act, the regulations, rules, guidelines, notices or directions made thereunder, or the rules of procedure of a securities, commodities or derivatives exchange, by a licensed or approved person, listed company, employee or a director of a licensed or approved person or director of a listed company as provided under section 11(3)(cc)—

- (a) with respect to a licensed person, listed company, securities, commodities or derivatives exchange or other approved person—
 - (i) a public reprimand;

- (ii) suspension in the trading of a listed company's securities, commodities or derivatives for a specified period;
 - (iii) suspension of a licensed person from trading for a specified period;
 - (iv) restriction on the use of a licence;
 - (v) recovery from such person of an amount equivalent to two times the amount of the benefit accruing to such person by virtue of the breach;
 - (vi) the levying of financial penalties not exceeding ten million shillings;
 - (vii) revocation of the licence of such person;
- (b) with respect to an employee of a licensed or approved person, including a securities, commodities or derivatives exchange—
 - (i) require the licensed or approved person to take disciplinary action against the employee;
 - (ii) disqualification of such employee from employment in any capacity by any licensed or approved person or listed company for a specified period;
 - (iii) recovery from the employee of a licensed or approved person an amount double the benefit accruing to such person be reason of the breach;
 - (iv) the levying of financial penalties not exceeding five million shillings;
- (c) with respect to a director of a listed company or a licensed or approved person, including a securities, commodities or derivatives exchange—
 - (i) disqualification of such person from appointment as a director of a listed company or licensed or approved person including, a securities, commodities or derivatives exchange;
 - (ii) the recovery from such person of an amount equivalent to two times the amount of the benefit accruing to the person by reason of the breach;
 - (iii) the levying of financial penalties in such amounts as may be prescribed.

Section 34A of Cap. 485 which is intended to be amended—

(1) Where a person commits an offence under this Act and no specific penalty is provided for, that person shall be liable on conviction—

(a) on a first offence, in the case of—

- (i) an individual, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years and pay two of the contravention; or
- (ii) a company, to a fine not exceeding ten million shillings and pay two times the amount of any gain made or loss avoided as a result of the contravention;

(b) on any subsequent offence, in the case of—

- (i) an individual, to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years and pay three times the amount of any gain made or loss avoided as a result of the contravention; or
- (ii) a company, to a fine not exceeding thirty million shillings and pay three times the amount of any gain made or loss avoided as a result of the contravention.

The Banking Act (Cap. 488)

Section 33B which it is intended to amend-

(1) A bank or a financial institution shall set the maximum interest rate chargeable for a credit facility in Kenya at no more than four per cent, the Central Bank Rate set and published by the Central Bank of Kenya.

(2) A person shall not enter into an agreement or arrangement to borrow or lend directly or indirectly at an interest rate in excess of that prescribed by law.

(3) A bank or financial institution which contravenes the provisions of subsection (2) commits an offence and shall, on conviction, be liable to a fine of not less than one million shillings, or in default, the Chief Executive Officer of the bank or financial institution shall be liable to imprisonment for a term not less than one year.

The Retirements Benefits Act (No. 3 of 1997)

Section 37 of No.3 of 1997 which it is intended to amend-

(1) Every scheme shall have a prudent investment policy on the investment of the funds of the scheme so as to maintain the capital funds

of the scheme and generally to secure market rates of return on such investment:

Provided that a scheme with a fund value of one hundred million Kenya shillings or less may invest up to one hundred *per centum* of its scheme funds in Government securities.

(2) Notwithstanding the provisions of any other written law, the investment policy of a scheme shall be implemented subject to any regulations the Minister may, in consultation with the Authority, make for that purpose.

(3) There shall be submitted to the Chief Executive Officer, in respect of every scheme, a statement of all investments of the scheme fund, in such form, manner and at such intervals as may be prescribed.

The Employment Act (No. 11 of 2008)

Section 2 of No. 11 of 2008 which it is intended to be amended-

“employee earnings” means the taxable amount determined under the Income Tax Act for purposes of levying income tax on the employee emoluments;

The Accountants Act (No. 15 of 2008)

Section 17 of No. 15 of 2008 which it is intended to amend-

- (1) The functions of the Examinations Board shall be to—
 - (a) prepare syllabuses for professionals’ and technicians’ examinations in accountancy and company secretarial practice and related disciplines;
 - (b) make rules with respect to such examinations;
 - (c) arrange and conduct examinations and issue certificates to candidates who have satisfied examination requirements;
 - (d) promote recognition of its examinations in foreign countries;
 - (e) investigate and determine cases involving indiscipline by students registered with the Examinations Board;
 - (f) promote and carry out research relating to its examinations;
 - (g) promote the publication of books and other materials relevant to its examinations;
 - (h) liaise with the Ministry of Education in accreditation of institutions offering training in subjects examinable by the Board; and

(1) do anything incidental or conducive to the performance of any of the preceding functions.

(2) The Examinations Board shall consult with the Council, and with the Council of the Institute of Certified Public Secretaries of Kenya and any other appropriate stakeholder, as often as it considers it necessary to do so for the purpose of exercising and performing its functions.

(2A) The Examinations Board shall, prior to registering a person to undertake an examination in accounting, require that the person be registered as a member of the Institute.

The Proceeds of Crime and Anti-Money Laundering Act (No. 9 of 2009)

Section 2 of No. 9 of 2009

(a) “designated non-financial businesses or professions” means—

(b) casinos (including internet casinos);

(c) real estate agencies;

(d) dealing in precious metals;

(e) dealing in precious stones;

(f) accountants who are sole practitioners, partners or employees within professional firms;

(g) non-governmental organisations;

(fa) trust and company service providers;

(g) such other business or profession in which the risk of money laundering exists as the Minister may, on the advice of the Centre, declare;

Section 48 of No. 9 of 2009

48. The reporting obligations under this Part shall apply to accountants when preparing or carrying out transactions for their clients in the following situations—

(a) buying and selling of real estate;

(b) managing of client money, securities or other assets;

(c) management of bank, savings or securities accounts;

(d) organisation of contributions for the creation, operation or management of companies;

(e) creation, operation or management of buying and selling of business entities.