

SPECIAL ISSUE

Kenya Gazette Supplement No. 36 (National Assembly Bills No. 8)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2020

NAIROBI, 30th March, 2020

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THE TAX LAWS (AMENDMENT) BILL, 2020**A Bill for****AN ACT of Parliament to make amendments to tax related laws****ENACTED by the Parliament of Kenya, as follows—**

1. This Act may be cited as the Tax Laws (Amendment) Act, 2020 and shall come into operation, or be deemed to have come into operation on the date of assent.

Short title and commencement.

2. The several laws specified in the first column of the Schedule are amended in the provisions specified in the second column thereof, in the manner specified in the third column.

SCHEDULE

<i>Written Law</i>	<i>Provision</i>	<i>Amendment</i>
The Income Tax Act (Cap. 470)	s.2	Delete the definition of “qualifying interest” and substitute therefor the following new definition —

“qualifying interest” means the aggregate interest, discount or original issue discount receivable by a resident individual in any year of income:

Provided that—

- (a) interest earned on an account held jointly by a husband and wife shall be deemed to be qualifying interest; and
- (b) in the case of housing bonds, the aggregate amount of interest shall not exceed three hundred thousand shillings.

s.10(1)

Insert the following new paragraph immediately after paragraph (j)–

- (k) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services).

s. 12C (1)

Delete subsection (1) and substitute therefor the following new subsection—

(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 is more than five hundred thousand shillings but does not exceed or is not expected to exceed fifty million shillings during any year of income.

(3) Delete paragraph (c)

(5) Delete

(6) Delete

15(2)(ab) Delete

15(2)(h) Delete

15(2)(s) Delete

15(2)(ss) Delete

15(2)(u) Delete

15(2)(v) Delete

15(2)(x) Delete

22C Delete

34(2) Delete paragraph (o) and substitute therefor the following paragraphs—

(o) insurance or reinsurance premium, except insurance or reinsurance premium paid in respect of aircraft; or

(p) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services).

35(1) Insert the following new paragraph immediately after paragraph (n) —

(o) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services).

s.133. Insert the following new sub-section immediately after sub-section (5)—

(6) Notwithstanding the repeal of the Second Schedule, the provisions of paragraph 24 E of the repealed Schedule shall continue to be in force until 30th August, 2020.

First Schedule, Part A, paragraph 4	Delete
paragraph 7	Delete
paragraph 9	Delete
paragraph 18	Delete
paragraph 22	Delete
paragraph 25	Delete
paragraph 28	Delete
paragraph 29	Delete

paragraph 30 Delete

paragraph 31 Delete

paragraph 32 Delete

paragraph 33 Delete

paragraph 34 Delete

paragraph 35 Delete

paragraph 36 Delete paragraph 36 and substitute therefor the following new paragraph—

36. Such part of the income of an individual, chargeable to tax under section 3(2)(f) as consists of a gain derived from the transfer of property (including investment shares) which is transferred or sold for the purpose of administering the estate of a deceased person where the transfer or sale is completed within two years of the death of the deceased or within such extended time as the Commissioner may allow in writing:

Provided that where there is a court case regarding such estate, the period of transfer or sale under this paragraph shall be two years from the date of the finalization of such court case.

paragraph 40 Delete

paragraph 41 Delete

paragraph 44 Delete

paragraph 45 Delete

paragraph 46 Delete

paragraph 47 Delete

paragraph 50	Delete
paragraph 51	Delete
paragraph 52	Delete
paragraph 53	Delete
paragraph 55	Delete
paragraph 56	Delete
paragraph 60	Delete
Part II	Repeal
Second Schedule	Repeal the Second Schedule and replace therefor the following new paragraph—

**SECOND SCHEDULE
(Sections 4, 5 and 15)**

INVESTMENT ALLOWANCE

Deduction of investment allowance. **1.** Where a person incurs capital expenditure in respect of an item listed in the first column of the table, an investment allowance may be deducted in computing the gains or profits of that person at the corresponding rate specified in the second column, for each year of income—

<i>Capital expenditure incurred on:</i>	<i>Rate of Investment Allowance</i>
(a) Buildings—	
(i) Hotel building	50% in the first year of use
(ii) Building used for	50% in

	manufacture	the first year of use
(iii)	Hospital buildings	50% in the first year of use
(iv)	Petroleum or gas storage facilities	50% in the first year of use
(v)	Residual value to item (a) (i) to (a)(iv)	25% per year, on reducing balance
(vi)	Educational buildings including student hostels	10% per year, on reducing balance
(vii)	Commercial building	10% per year, on reducing balance
(b)	Machinery –	
(i)	Machinery used for manufacture	50% in the first year of use
(ii)	Hospital equipment	50% in the first year of use
(iii)	Ships or aircrafts	50% in the first year of use
(iv)	Residual value items (b) (i) to (b)(iii)	25% per year, on reducing balance
(v)	Motor vehicles and heavy earth moving equipment	25% per year, on reducing balance
(vi)	Computer and peripheral computer hardware and software, calculators, copiers and duplicating	25% per year, on reducing balance

	machines	
(vii)	Furniture and fittings	10% per year, on reducing balance
(viii)	Telecommunications equipment	10% per year, on reducing balance
(ix)	Filming equipment by a local film producer licensed by the Cabinet Secretary responsible for filming	25% per year, on reducing balance
(x)	Machinery used to undertake operations under a prospecting right	50% in the first year of use and 25% per year, on reducing balance
(xi)	Machinery used to undertake exploration operations under a mining right	50% in the first year of use and 25 per year, on reducing balance
(xii)	Other machinery	10% per year, on reducing balance
(c)	Purchase or an acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator	10% per year, on reducing balance
(d)	Farmworks	50% in the first year of use and 25% per year, on reducing balance

Provided that—

- (a) in the case of change of user of a building, the deduction shall be restricted to the residual value or unclaimed amount at the applicable rate;
- (b) in respect of a hotel, educational or hospital building, the building shall be licensed by the competent authority; and
- (c) “building used for manufacture” includes any structure or civil works deemed to be part of a building where the structure or civil works relates or contributes to the use of the building;
- (d) “commercial building” includes—
 - (i) a building used as an office, shop, showroom, godown, storehouse, or warehouse used for storage of raw materials for manufacture of finished or semi-finished goods; or
 - (ii) civil works relating to water or electric power undertaking, but does not include an undertaking not carried on by way of trade;
- (e) “machinery used for manufacture” means machinery used directly in the process of manufacture, and includes machinery used for the following ancillary purposes—
 - (i) generation, transformation and distribution of electricity;

- (ii) clean-up and disposal of effluents and other waste products;
- (iii) reduction of environmental damage;
- (iv) water supply or disposal;
- (v) maintenance of the machinery; or
- (vi) scientific research and development;

- (f) “manufacture” means the making, including packaging, of goods from raw or semi-finished goods, or the generation of electrical energy for supply to the national grid, or the transformation and distribution of electricity through the national grid, but does not include design, storage, transport, administration or any other ancillary activity;

Calculation of written down or residual value.

2. The written down or residual value of each item referred to in paragraph 1 shall be calculated separately, and shall be the balance of capital expenditure taking into account the sale of the item after deducting investment allowance.

Treatment of excess or deficit of realised amounts.

3. Where the amount realised from the sale of an item referred to in paragraph 1 exceeds the written down or residual value, the excess shall be treated as a trading receipt or, conversely, a trading loss for the year of income.

Balancing charge or deduction on cessation of business.

4. (1) Where an investment allowance has been deducted under paragraph 1 in computing the gains or profits of a person and that person ceases to carry on business for the purposes of which the item was used and the item ceases to be owned by

him, a balancing charge or balancing deduction shall be made or allowed for the year of income in which he ceased to carry on business.

(2) Where the person referred to in subparagraph (1) is a partnership, the person shall be deemed to have ceased to carry on business only when all the partners cease to carry on that business.

(3) Where the items are sold by a liquidator of a company, the balancing charge or balancing deduction shall be made or allowed in the year of income in which the winding up commenced.

(4) Where on cessation of a business, a balancing charge or balancing deduction is to be made or allowed under this paragraph and—

(a) the consideration received exceeds the residual value at the time of cessation, the balancing charge shall be the excess amount or, where the residual value is nil, the consideration received; or

(b) a consideration is not received by the person who owns the items, or the residual value at the time of the cessation exceeds the consideration received, the balancing deduction shall be the residual value at the time of cessation, or the excess thereof over the consideration received.

Determination
of market
value of items
used in a
business.

5. Where an item is brought into use for a business without being purchased or ceases permanently to be used without being sold, it shall be deemed to have been purchased or sold, and the cost or amount realized shall be deemed to be the market value.

Restriction
On capital

6. (1) Where capital expenditure exceeding

expenditure on three million shillings is incurred on a motor
motor vehicle, other than a commercial vehicle, that
vehicles. capital expenditure shall be restricted to three
million shillings.

(2) Where the motor vehicle referred to in subparagraph (1) is sold, the sale price shall be deemed to be the proportion of the proceeds of sale, having regard to the original purchase price and three million shillings.

Limitation on 7. Capital expenditure incurred on the
capital construction of a building does not include capital
expenditure on buildings. expenditure on the acquisition of, or of rights in or
over, land.

Ascertainment of capital expenditure on buildings. 8. (1) Where a building is used partly for purposes other than the purposes specified in paragraph 1, the capital expenditure on which the deduction in respect of the building is calculated shall be the expenditure attributable to that portion of the building which is used for those purposes, but where the expenditure attributable exceeds ninety per cent of the total expenditure incurred on the construction of the building the whole building shall be treated as used for the specified purposes.

(2) Where an existing building is extended by further construction, the extension shall be treated as a separate building.

(3) Where capital expenditure is incurred on the construction of a building and before that building is used it is sold, the seller shall not be allowed a deduction.

(4) Where a person purchases the building referred to in subparagraph (3), that person shall be deemed to have incurred capital expenditure on its construction equal to the capital expenditure actually incurred on its construction or to the

amount paid by him, whichever is lesser.

(5) Where the building referred to in subparagraph (3) is sold more than once before it is used, subparagraph (4) shall apply but only in relation to the last sale.

(6) Where a building referred to in subparagraph (3) is sold by a person carrying on a business of construction for sale, the qualifying capital expenditure shall be the price paid on the sale.

Expenditure incurred for a person. **9.** Any expenditure incurred on behalf of a person by another person, shall not qualify for deduction under this Schedule.

Third
Schedule
Head A

Delete the words “sixteen thousand eight and ninety-six” appearing in paragraph 1 and substitute therefor the words “twenty-eight thousand eight hundred”.

Head B (Rates
of Tax)

Deleting item 1 and 1 A of Head B (Rates of Tax) and substituting therefor the following new items-

1. The individual rates of tax shall be—

	<i>Rate in each shilling</i>
On the first Shs. 288,000	10%
On the next Shs.200,000	15%
On the next Shs. 200,000	20%
On all income above Shs. 688,000	25%

1A. The wife’s employment, wife’s professional and wife’s self-employment income rates of tax shall be—

Rate in each

shilling

On the first Shs. 288,000 10%

On the next Shs. 200,000 15%

On the next Shs. 200,000 20%

On all income above Shs. 688,000 25%

Paragraph 2(a) Insert the following new item (viii) immediately after item (vii)—

(viii) For the year of income 2020 and each subsequent year of income

Paragraph 2(c) Delete

Paragraph 2(d) Delete

Paragraph 2(e) Delete

Paragraph 2(g)(i) Delete

Paragraph 2(k) Delete

Paragraph 2(l) Delete

New Insert a new subparagraph after subparagraph (a) as follows—

(m) in respect of a company engaged in business under a special operating framework arrangement with the Government, the rate of tax specified in the Agreement shall continue to apply for the unexpired period as provided under the Agreement.

Paragraph 3(d) Delete the word “ten” and substitute therefor the word “fifteen”.

Paragraph 3(p) Insert the words “or reinsurance” immediately after the word “insurance”.

Paragraph 3 Insert the following sub-paragraph after paragraph (p)—

(q) in the case of sales promotion, marketing, advertising services, and transportation of goods

(excluding air and shipping transport services twenty percent of the gross amount;

Paragraph
5(d)(i)

Delete the tabulation of rates and income bands at the end and substitute therefor the following new rates and income bands—

*Rate in each
shilling*

On the first Shs. 400,000 10%

On the next Shs. 400,000 15%

On the next Shs. 400,000 20%

On any amount above Shs. 1,200,000 of the amount in excess of the tax free amount 25%

Paragraph
5(d)(ii)

Delete the tabulation of rates and income bands at the end and substitute therefor the following new rates and income bands—

*Rate in each
shilling*

On the first Shs.288,000 10%

On the next Shs.200,000 15%

On the next Shs. 200,000 20%

On all income above Shs. 688,000 25%

Paragraph
5(d)(iii)

Deleting the words “thirty percent” and substitute therefor the words “twenty five percent”.

Paragraph 9

Delete the words “three percent” and substitute therefor the words “one percent”.

The s.2
Value

Insert the following new definition in its proper

Added
Tax,
2013
(No.
35 of
2013)

alphabetical sequence—

“ordinary bread” means bread containing only the following ingredients; wheat flour, sugar, salt, yeast, fat or oil, bread improver, preservatives and water.

s.5(2) Delete item (i) appearing in the proviso to paragraph (aa).

s.16(1) Delete proviso and substitute therefor the following new proviso—

Provided that a credit note may be issued:

(a) only within six months after the issue of the relevant tax invoice; or

(b) where there is a commercial dispute in court with regard to the price payable, within thirty days after the determination of the matter.

s.31(1) Delete the word “five” appearing in the proviso and substitute therefor the word “four”.

s. 43(1) Delete the words “Every registered” appearing in subsection (1) and substitute therefor the article “A”.

<p>First Schedule Section A Part I</p>	<p>Insert the following new paragraph immediately after paragraph 21-</p> <p>21A. Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of tariff numbers—</p>
	<p>0401.10.00—of a fat content, by weight, not exceeding 1%;</p> <p>0401.20.00—of a fat content, by weight, exceeding 1% but not exceeding 6%;</p> <p>0401.40.00—of a fat content, by weight, exceeding 6%</p>

	but not exceeding 10%; 0401.50.00—of a fat content, by weight, exceeding 10%.
Paragraph 26	Delete
Paragraph 27	Delete
Paragraph 29	Delete
Paragraph 30	Delete
Paragraph 30A	Delete
Paragraph 39(3)	Insert the following new items in proper their proper numerical sequence—

<i>Tariff line</i>	<i>Description</i>
3002.20.00	Vaccines for human medicine.
3002.30.00	Vaccines for veterinary medicine
3003.10.00	Medicaments containing penicillin or derivatives thereof, with penicillanic acid structure, or streptomycin or their derivatives.
3003.39.00	Other medicaments, containing hormones or other products of heading No. 29.37 but not containing antibiotics, not put up in measured doses or in forms or packings for retail sale.
3003.40.00	Medicaments containing alkaloids or derivatives thereof but not containing hormones or other products of heading No. 29.37 or antibiotics, not put up in measured doses or in forms or packings for retail sale.

3003.90.00	Other.
3003.90.10	Infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale.
3003.90.90	Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale.
3004.10.00	Medicaments containing penicillin or derivatives thereof, with a penicillanic acid structure, or streptomycin or their derivatives, put up in measured doses or in forms or packings for retail sale.
3004.20.00	Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale.
3004.32.00	Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale.
3004.39.00	Other medicaments containing hormones or other products of heading No. 29.37 but not containing antibiotics, put up in measured doses or in forms or packings for retail sale.
3004.41.00	Containing ephedrine or its salts.
3004.42.00	Containing pseudoephedrine (INN) or its salts.

- 3004.49.00 Other.
- 3004.50.00 Other medicaments containing vitamins or other products of heading No. 29.36 put up in measured doses or in forms or packings for retail sale.
- 3004.90.00 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.
- 3004.90.90 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.

Delete the following items and their corresponding descriptions—

- 8802.11.00 Helicopters of an unladen weight not exceeding 2,000 kg.
- 8802.12.00 Helicopters of an unladen weight exceeding 2,000 kg.
- 8802.20.00 Aeroplanes and other aircraft, of unladen weight not exceeding 2,000 kg.
- 8803.30.00 Other parts of aeroplanes helicopters.
- 8805.21.00 Air combat simulators and parts thereof.

8805.10.00 Aircraft launching gear and parts thereof;
deck-arrestor or similar gear and parts
thereof.

8805.29.00 Other ground flying trainers and parts
thereof.

Paragraph 40 Delete

Paragraph 41 Delete

Paragraph 43 Delete

Paragraph 45 Delete

Paragraph 47 Delete

Paragraph 48 Delete

Paragraph 50 Delete

Paragraph 52 Delete

Paragraph 52A Delete

Paragraph 52B Delete

Paragraph 53 Delete

Paragraph 55 Delete

Paragraph 56 Delete

Paragraph 60 Delete

Paragraph 61 Delete

Paragraph 62 Delete

Paragraph 65 Delete

Paragraph 66	Delete
Paragraph 67	Delete
Paragraph 88	Delete
Paragraph 90	Delete
Paragraph 93	Delete
Paragraph 94	Delete
Paragraph 97	Delete
Paragraph 102	Delete
Paragraph 104	Delete
Paragraph 107	Delete
Part II paragraph 10	Delete and substitute therefor the following new paragraph— 10. Tea and coffee brokerage services.
Paragraph 18	Insert the words “excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00” at the end.
Paragraph 22	Delete
Paragraph 24	Delete
Paragraph 25	Delete
Paragraph 26	Delete
Paragraph 28	Delete
Paragraph 30	Delete
Paragraph 31	Delete
Second Schedule	Delete

	Part A	
	Paragraph 13	
	Paragraph 13A	Delete
	Paragraph 15	Delete
	Paragraph 16	Delete
	Paragraph 18	Delete
	Paragraph 19	Delete
	Part C	Repeal
The Excise Duty Act, 2015 (No. 23 of 2015)	First Schedule Part I Paragraph 1	(a) Delete the word “imported” appearing in the description relating to “sugar confectionery of tariff heading 17.04”
		(b) Delete the word “imported” appearing in the description relating to “white chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00”
	Part III	Delete the words “licensed financial institutions” appearing in the definition of the term "other fees" and substituting therefor the words “licensed activities”.
	Second Schedule Part A Paragraph 13	Delete
	Paragraph 14	Delete
The Tax Procedures Act, 2015 (No. 29 of 2015)	New	Insert the following new section immediately after section 39A—
		<p>Appointment of Agents. 39B. (1) The Commissioner may appoint a person registered under the Banking Act to act as an agent for revenue banking services through an agreement.</p> <p>(2) Any person appointed shall be</p>

required to transfer the funds to the designated Central Bank accounts within a maximum of two days following the date of collection.

(3) A person appointed shall be liable to a penalty equivalent to two per cent of the revenue collections delayed and shall be compounded for every other day on the amount of revenue that remains untransferred to the designated Central Banks accounts after the prescribed period.

(4) The penalty imposed for failure to adhere to the terms of the agreement shall be treated as a tax debt due to the government and the enforcement measures for collection and recovery of tax shall apply.

s.65(3) Repeal

s. 69 Repeal

s. 83(1) Delete the words “five thousand shillings” appearing paragraph (b) and substitute therefor the words “one thousand shillings”

The
Miscellaneous
Fees and
Levies Act,
2016
(No. 29 of
2016)

s.7(2A)(a) Delete

New Insert the following new section immediately after section 8A–

Processing
fees on duty
free motor
vehicles.

8B. (1) There shall be a fee to be known as the processing fee on all motor vehicles excluding motorcycles imported or purchased duty free prior to clearance through customs under the Fifth Schedule to the East African Community Customs

Management Act, 2004.

(2) The fee shall be Kenya shillings ten thousand applicable to all motor vehicles excluding motorcycles imported or purchased duty free specified in paragraphs 4, 5, 6, 7, 8, 9, 10 and 11 of Part A, and paragraph 3 and 5 of Part B under the Fifth Schedule to the East African Community Customs Management Act, 2004.

Second
Schedule
Part A
Paragraph
(viii)

Delete

Paragraph (ix)

Delete

Paragraph (xv) Delete and substitute therefor the following new paragraph—

(xv) aircraft excluding aircraft of unladen weight not exceeding 2,000kg and Helicopters of Heading 8802.11.00 and 8802.12.00

Paragraph (xxi)

Delete

Paragraph
(xxia)

Delete

Paragraph
(xxii) Delete and substitute therefor the following new paragraph—

(xxii) any other goods as the Cabinet Secretary may determine are in public interest.

Paragraph
(xxiii)

Delete

Second
Schedule
Part B
Paragraph (v)

Delete

Paragraph (va)

Delete

Paragraph (vi) Delete and substitute therefor the following new paragraph—

(vi) any other goods as the Cabinet Secretary may determine are in public interest.

Paragraph (vii) **Delete**

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

s. 5A(2) **Insert the following new paragraph (c) immediately after paragraph (b).**

(c) in the case of information not specified in paragraph (a) and (b) leading to the enforcement of the tax laws, five hundred thousand shillings.

MEMORANDUM OF OBJECTS AND REASONS

The Tax Laws (Amendment) Bill, 2020 seeks to make several amendments to the following tax-related statutes –

The Income Tax Act (Cap. 470)

The Bill, seeks to amend the Income Tax Act to reduce the individual top tax rate and resident corporate tax rate. This will increase disposable income for individuals in order to enhance consumption and enhance investments for companies.

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

The Bill seeks to amend the Value Added Tax Act to align the incentives contained in the Bill with the best practice.

The Excise Duty Act, 2015 (No. 23 of 2015)

The Bill, seeks to amend the Excise Duty Act, 2015 to enhance equity and fairness in taxation of excisable goods.

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

The Bill, seeks to amend the Tax Procedures Act, 2015 in order to streamline the administration of the tax laws.

The Miscellaneous Fees and Levies Act, 2016 (No. 29 of 2016)

The Bill, seeks to amend enhance equity and fairness in the imposition of miscellaneous fees and levies.

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

The Bill, seeks to amend the Kenya Revenue Authority Act, 1995 enhance the capacity of the Kenya Revenue Authority.

The enactment of this Bill may occasion additional expenditure of public funds. This Bill is not concerning county governments within the meaning of Article 110 of the Constitution.

Dated the 27th March, 2020.

ADEN DUALE,
Leader of Majority Party.

Section 2 of Cap. 470 which it is proposed to amend—

“qualifying interest” means the aggregate interest, discount or original issue discount receivable by a resident individual in any year of income from—

- (i) a bank or financial institution licensed under the Banking Act(Cap. 488); or
- (ii) a building society registered under the Building Societies Act (Cap. 489) which in the case of housing bonds has been approved by the Minister for the purposes of this Act; or
- (iii) the Central Bank of Kenya: Provided that—(a)interest earned on an account held jointly by a husband and wife shall be deemed to be qualifying interest; and(b)in the case of housing bonds, the aggregate amount of interest shall not exceed three hundred thousand shillings.

Section 10 of Cap. 470 which it is proposed to amend—

10. (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
an activity by way of supporting, assisting or arranging an
 - (f) appearance or performance referred to in paragraph (e) of this section;

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.

Section 12 of Cap. 470 which it is proposed to amend—

12 C. (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.

Section 15 of Cap. 470 which it is proposed to amend-

15.(2) Without prejudice to sub-section (1) of this section, in computing for a year of income the gains or profits chargeable to tax under section 3(2)(a) of this Act, the following amounts shall be deducted:

- (a) bad debts incurred in the production of such gains or profits which the Commissioner considers to have become bad, and doubtful debts so incurred to the extent that they are estimated to the satisfaction of the Commissioner to have become bad, during such year of income and the Commissioner may prescribe such guidelines as may be appropriate for the purposes of determining bad debts under this subparagraph;

- (b) amounts to be deducted under the Second Schedule in respect of that year of income;
 - (bb) amounts to be deducted under the Ninth Schedule in respect of that year of income;
- (c) any expenditure of a capital nature incurred during that year of income by the owner or occupier of farm land for the prevention of soil erosion;
- (d) any expenditure of a capital nature incurred in that year of income by any person on legal costs and stamp duties in connexion with the acquisition of a lease, for a period not in excess of, or expressly capable of extension beyond, ninety-nine years, of premises used or to be used by him for the purposes of his business;
- (e) any expenditure, other than expenditure referred to in paragraph (f) of this section, incurred in connection with any business before the date of commencement of that business where such expenditure would have been deductible under this section if incurred after such date, so, however, that the expenditure shall be deemed to have been incurred on the date on which such business commenced;
- (f) in the case of the owner of premises, any sums expended by him during such year of income for structural alterations to the premises where such expenditure is necessary to maintain the existing rent:

Provided that no deduction shall be made for the cost of an extension to, or replacement of, such premises;
- (g) the amount considered by the Commissioner to be just and reasonable as representing the diminution in value of any implement, utensil or similar article, not being machinery or plant in respect of which a deduction may be made under the Second Schedule, employed in the production of gains or profits;
- (h) any entrance fee or annual subscription paid during that year of income to a trade association which has made an election under section 21(2) of this Act;
- (i) in the case of gains or profits of the owner of any land from the sale of, or the grant of the right to fell, standing timber which

was growing on such land at the time such owner acquired such land—

- (i) where such land was acquired for valuable consideration, so much of the consideration as the Commissioner may determine to be just and reasonable as representing the cost of such standing timber; or
 - (ii) where no valuable consideration was given for the land, so much of such amount as the Commissioner may determine to be just and reasonable as representing the value of such standing timber at the time the owner acquired such land, as is attributable to such timber sold during such year of income;
- (j) in the case of gains or profits from the sale of standing timber by a person who has purchased the right to fell such timber, so much of the price paid for such right as the Commissioner may determine to be just and reasonable as attributable to the timber sold during such year of income;
- (k) *deleted by Act No. 8 of 1997, s. 32;*
- (l) any expenditure of a capital nature incurred in such year of income by the owner or tenant of any agricultural land, as defined in the Second Schedule, on clearing such land, or on clearing and planting thereon permanent or semi-permanent crops;
- (m) *deleted by Act No. 16 of 2014, s. 7(a);*
- (n) any expenditure incurred by any person for the purposes of a business carried on by him being—
- (i) expenditure of a capital nature on scientific research; or
 - (ii) expenditure not of a capital nature on scientific research; or
 - (iii) a sum paid to a scientific research association approved for the purposes of this paragraph by the Commissioner as being an association which has as its object the undertaking of scientific research related to the class of business to which such business belongs; or
 - (iv) a sum paid to any university, college, research institute or other similar institution approved for the purposes of this paragraph by such Commissioner for the scientific as is research mentioned in subparagraph (iii) of this paragraph;

- (o) any sum contributed in such year of income by an employer to a national provident fund or other retirement benefits scheme established for employees throughout Kenya by the provisions of any written law;
- (p) any expenditure on advertising in connexion with any business to the extent that the Commissioner considers just and reasonable; and for this purpose “expenditure on advertising” includes any expenditure intended to advertise or promote, whether directly or indirectly, the sale of the goods or services provided by that business;
- (q) *deleted by Act No. 13 of 1984, s. 19*;
- (r) an amount equal to one-third of the total gains and profits from employment of an individual who is not a citizen of Kenya and—
 - (i) whose employer is a non-resident company or partnership trading for profit;
 - (ii) who is in Kenya solely for the performance of his duties in relation to his employer’s regional office, which office has been approved for the purposes of this paragraph by the Commissioner;
 - (iii) who is absent from Kenya for the performance of those duties for a period or periods amounting in the aggregate to one hundred and twenty days or more in that year of income; and
 - (iv) whose gains and profits from that employment are not deductible in ascertaining the total income chargeable to tax under this Act of his employer or of any company or partnership which controls, or is controlled by, that employer; and in this subparagraph “control” has the meaning assigned to it in paragraph 32 of the Second Schedule;
- (s) expenditure of a capital nature incurred in that year of income by a person on legal costs and other incidental expenses relating to the authorisation and issue of shares, debentures or similar securities offered for purchase by the general public;
- (ss) expenditure of a capital nature incurred in that year of income by a person, on legal costs and other incidental expenses, for the purposes of listing on any securities exchange operating in Kenya, without raising additional capital;
- (t) expenditure incurred by the lessee in the case of a lease or similar transaction as determined in accordance with such rules as may be prescribed under this Act;

- (u) expenditure of a capital nature incurred in that year of income by a person on rating for the purposes of listing on any securities exchange operating in Kenya;
- (v) club subscriptions paid by an employer on behalf of an employee;
- (w) any cash donation in that year of income to a charitable organization registered or exempt from registration under the Societies Act (Cap. 108) or the Non-governmental Organisations Co-ordination Act, 1990 (Act No. 19 of 1990, First Sch.), and whose income is exempt from tax.
under paragraph 10 of the First Schedule to this Act, or to any project approved by the Minister for finance;
- (x) expenditure of a capital nature incurred in that year of income, with the prior approval of the Minister, by a person on the construction of a public school, hospital, road or any similar kind of social infrastructure;
- (y) expenditure of a capital nature incurred in the purchase or acquisition of an indefeasible right to use a fibre optic cable by a telecommunication operator, provided the amount of deduction shall be limited to five per cent per annum;
- (z) expenditure incurred in that year of income by a person sponsoring sports, with the prior approval of the Cabinet Secretary responsible for sports;
- (aa) expenditure incurred in that year of income on donations to the Kenya Red Cross, county governments or any other institution responsible for the management of national disasters to alleviate the effects of a national disaster declared by the President;
- (ab) thirty percent of electricity cost incurred by manufacturers in addition to the normal electricity expense, subject to conditions set by the Ministry of Energy.

Section 34(2) (o) of Cap. 470 which it is proposed to amend—

(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);
- (l) an insurance premium except insurance premium paid for insurance of aircraft.

Section 35 of Cap. 470 which it is proposed to amend—

35. (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 non-resident 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;

First Schedule to Cap. 470 which it is proposed to amend—

EXEMPTIONS

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

1. So much of the income of a person as is expressly exempted from income tax by or under the provisions of any Act of Parliament for the time being in force, to the extent provided by such Act.
2. The income of any person who, or organization which, is exempt from income tax by or under any Act of Parliament for the time being in force, to the extent provided by such Act.
4. The income of—
 - The Tea Board of Kenya,
 - The Pyrethrum Board of Kenya,
 - The Sisal Board of Kenya,
 - The Kenya Dairy Board,
 - The Canning Crops Board,
 - The Central Agricultural Board,
 - The Pig Industry Board,
 - The Pineapple Development Authority,
 - The Horticultural Crops Development Authority,
 - The Kenya Tea Development Authority,
 - The National Irrigation Board,
 - The Mombasa Pipeline Board,
 - The Settlement Fund Trustees,
 - The Kenya Post Office Savings Bank,
 - The Cotton Board of Kenya.
5. *Deleted by Act No. 13 of 1984, s. 21.*
6. The income, other than income from investments, of an amateur

sporting association, that is to say, an association—

- (a) whose sole or main object is to foster and control any outdoor sport; and
 - (b) whose members consist only of amateurs or affiliated associations the members of which consist only of amateurs; and
 - (c) whose memorandum of association or by-laws have provisions defining an amateur or a professional and providing that no person may be or continue to be a member of such association if such person is not an amateur.
7. Profits or gains of an agricultural society accrued in or derived from Kenya from any exhibition or show held for the purposes of the society which are applied solely to such purposes, and the interest on investments of such society.
 8. The income of any county government.
 9. Interest on any tax reserve certificates which may be issued by authority of the Government.
 10. The income of any person from any management or professional fee, royalty or interest when the Minister certifies that it is required to be paid free of tax by the terms of an agreement to which the Government is a party either as principal or guarantor and that it is in the public interest that such income shall be exempt from tax.
 11. The income of any registered pension scheme.
 12. The income of any registered trust scheme.
 13. The income of any registered pension fund.
 14. The income of a registered provident fund.
 15. The income from the investment of an annuity fund, as defined in section 19 of this Act, of an insurance company.
 16. Pensions or gratuities granted in respect of wounds or disabilities caused in war and suffered by the recipients of such pensions or gratuities.
 17. Any payment in respect of disturbance, not exceeding three months' salary, made in connexion with a change in the constitution of the

Government of a Partner State or the Community to any person who, before such change, was employed in the public service of any of those Governments or of the Community.

18. Deleted by *Act No. 8 of 1978, s. 9.*
19. Deleted by *Act No. 8 of 1978, s. 9.*
20. Deleted by *Act No. 8 of 1978, s. 9.*
21. That part of the income of any officer of the Government or of the Community accrued in or derived from Kenya which consists of foreign allowances paid to such officer from public funds in respect of his office:

Provided that, where any person to whom such an allowance is paid is granted a deduction under section 15 of this Act in respect of any expenditure incurred in relation to an activity for which the allowance is paid, then the exemption conferred by this paragraph shall not apply to so much of such allowance as is equal to the amount of such deduction.
22. The income of the East African Development Bank and of Corporations established under Article 71 of the Treaty for East African Co-operation together with the income of subsidiary companies wholly owned by that Bank or by any of the said Corporations.
23. Deleted by *Act No. 8 of 1978, s. 9.*
24. The emoluments of any officer of the Desert Locust Survey who is not resident in Kenya.
25. The emoluments—
 - (a) *deleted by Act No. 38 of 2013, s. 22;*
 - (b) of any person in the public service of the Government of that country in respect of his office under that Government where such person is resident in Kenya solely for the purpose of performing the duties of his office,

where such emoluments are payable from the public funds of such country and are subject to income tax in such country.
26. The emoluments payable out of foreign sources in respect of duties performed in Kenya in connexion with a technical assistance or other agreement for developmental services or purpose to which the Government or the community is a party to any non-resident person

or to a person who is resident solely for the purposes of performing those duties, in any case where the agreement provides for the exemption of such emoluments.

27. Any education grant paid by the Government of the United Kingdom under any agreement between that Government and the Government of Kenya and received by any person who is employed in the public service of Kenya or by the Community.
28. The income received by way of remuneration under any contract which was entered into consequent upon financial assistance being received from the International Co-operation Administration for the enterprise in respect of which the contract was so entered into and which provides that the income shall be exempt from tax.
29. The income received by virtue of their employment by citizens of the United States of America who are employed by the Department of Agriculture of the United States of America on research work in co-operation with Government.
30. Gains or profits resultant from any reward paid by the United Kingdom Atomic Energy Authority for the discovery of uranium ore in Kenya, except to the extent that such reward is liable to income tax in a country outside Kenya and there is, between that country and Kenya, provision for any form of double taxation relief.
31. All income of any non-resident person not having a permanent establishment in Kenya accrued in or derived from Kenya after 17th June, 1971, and which consists of interest or management and professional fees paid by the Tana River Development Company Limited or its successors in title.
32. Such part of the income of the East African Power and Lighting Company accrued in or derived from Kenya as is certified from time to time by the Minister to have been expended (whether before or after the date of commencement of this Act) at the request of the Government either—
 - (a) in searching for a natural source in Kenya of geothermal energy;
 - or
 - (b) on investigations concerning the development in Kenya of electric power generation or supply,such exemption to take effect in the year in which the expenditure is incurred.
33. The income of the General Superintendence Company Limited, a company incorporated in Switzerland, accrued in or derived from

Kenya under an agreement dated 18th October, 1972, between the said company and the Central Bank of Kenya.

34. Interest on a savings account held with the Kenya Post Office Savings Bank.
35. Such part of the income of an individual, chargeable to tax under section 3(2)(f) as consists of a gain derived from the transfer of—
 - (a) shares in the stock or funds of the Government, the High Commission or the Authority established under the Organization or the Community;
 - (b) shares of a local authority;
 - (c) a private residence if the individual owner has occupied the residence continuously for the three-year period immediately prior to the transfer concerned:

Provided that—

- (i) in determining whether or not a person has occupied a residence continuously for three years, any period during which he was temporarily absent from the residence shall be ignored;
- (ii) references to a private residence include the immediately surrounding land utilized exclusively for personal purposes as an adjunct to the residence and not for the production of income, but does not include any part of the residence and land utilized for business purposes;
- (iii) no individual may claim or be taken to have used more than one residence as his residence at the same time for the purposes of this Act;
- (iv) no individuals may claim or be taken to have used more than one residence as their residence for the purposes of this Act at any time when they were husband and wife living together;
- (v) no individual shall claim or be taken to have used a residence as a residence at any time when he was a dependant of either or both of his parents;
- (vi) where a residence is used in part for business purposes, or is transferred in a single transaction together with land and other property used for the production of income, the taxable value of such property used for residential purposes shall be separately determined from that used for business

- purposes or for the production of income;
- (d) property (being land) transferred by an individual where—
 - (i) the transfer value is not more than three million shillings; or
 - (ii) agricultural property having an area of less than fifty acres where such property is situated outside a municipality, gazetted township or an area that is declared by the Minister, by notice in the Gazette, to be an urban area for the purposes of this Act;
 - (e) land which has been adjudicated under the Land Consolidation Act (Cap. 283) or the Land Adjudication Act (Cap. 284) when the title to such land has been registered under the Registered Land Act (Cap. 300) and transferred for the first time;
 - (f) property (including investment shares) which is transferred or sold for the purpose of administering the estate of a deceased person where the transfer or sale is completed within two years of the death of the deceased or within such extended time as the Commissioner may allow in writing:

Provided that where there is a court case regarding such estate the period of transfer or sale under this paragraph shall be two years from the date of the finalization of such court case.

PART II – SECURITIES, THE INTEREST ON WHICH IS EXEMPT
FROM TAX

1. Interest payable to non-resident persons on the following securities—
 - Kenya Government $2\frac{3}{4}$ per cent Stock 1977/83,
 - Kenya Government $3\frac{1}{2}$ per cent Stock 1973/78,
 - Kenya Government $4\frac{1}{2}$ per cent Stock 1971/78,
 - Kenya Government 5 per cent Stock 1978/82,
 - Kenya Government $5\frac{1}{2}$ per cent Stock 1976/80,
 - Kenya Government $6\frac{1}{2}$ per cent Stock 1972/74,
 - Kenya Government 6 per cent Loan to finance Development Programme 1957/60, 1960/63, 1980/93,
 - Nairobi City Council $3\frac{1}{4}$ per cent Stock 1970/74,
 - East African High Commission 4 per cent Stock 1972/74,
 - East African High Commission 4 per cent Stock 1973/76,
 - East African High Commission $5\frac{1}{2}$ per cent Stock 1980/84,
 - East African High Commission 5 per cent International Co-operation Administration Loan 1978,
 - East African High Commission $4\frac{3}{4}$ per cent International Bank for Reconstruction and Development Loans 1974 (two issues),
 - East African High Commission $5\frac{3}{4}$ per cent Stock 1977/83.
2. The income of Sceptre Trust Limited accrued in or derived from Kenya from interest payable by the Government at the rate of $6\frac{1}{2}$ per cent on two loans each of £250,000 made by Sceptre Trust Limited to the Government in 1959 and 1960 respectively for the purpose of Government staff housing and repayable over a period of twenty years.

3. The income of the International Bank for Reconstruction and Development accrued in or derived from Kenya from interest payable by the Government on a loan to be made in various currencies equivalent to \$8,400,000 (eight million four hundred thousand dollars) by the International Bank for Reconstruction and Development to the Government under the terms of loan Agreement No. 303 KE dated 29th November, 1961, for the purpose of Land Settlement and Development Projects.
4. The income of the Colonial Development Corporation accrued in or derived from Kenya from interest payable by the Government on a loan of £1,500,000 to be made by the Colonial Development Corporation to the Government under an agreement dated 18th December, 1961, for the purpose of Land Settlement and Development Projects.
5. The income of the Life and Casualty Insurance Company of Tennessee, a company incorporated in the United States of America, in so far as that income represents interest accrued in respect of or is derived from a loan of an amount not to exceed an aggregate of US\$2,100,000 charged on the revenues of the City Council of Nairobi and secured by a document described as a Loan Agreement, dated 1st July, 1969, made between the City Council of Nairobi of the one part and the Loan and Casualty Insurance Company of Tennessee of the other part relating to a project for housing development situated at Kimathi Estate, Nairobi.
6. The income of Kreditanstalt fur Wiederaufbau a statutory corporation incorporated in the Federal Republic of Germany in so far as such income represents interest accrued in respect of or derived from a loan of Deutsch Mark 27,257,515 made by the said Kreditanstalt fur Wiederaufbau to the Chemelil Sugar Company Limited under the provisions of a document described as a Loan Agreement dated 5th May, 1967, made between Chemelil Sugar Company Limited of the one part and Kreditanstalt fur Wiederaufbau of the other part relating to a loan for the supply of factory equipment for a sugar factory situated at Chemelil.
7. The income of SIFIDA Investment Company S.A., a company incorporated in Luxembourg, in so far as it consists of interest accrued in or derived from Kenya, whether before or after the date of commencement of this Act.
8. The income of the Export Development Corporation of Canada in so far as such income represents interest accrued in respect of or derived

from a loan of Canadian \$3,900,000 under a loan agreement dated 22nd March, 1972, between Panafrican Paper Mills (East Africa) Limited of the one part and Export Development Corporation of the other part.

9. The income of Export-Import Bank of the United States, an agency of the United States of America, in so far as it consists of interest accrued in or derived from Kenya.

The Second Schedule to Cap. 470 which it is proposed to amend—

SECOND SCHEDULE

DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE

PART I – DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE ON CERTAIN BUILDINGS

2. Increase of deductions

Notwithstanding paragraph 1(1)(a), where the Commissioner is satisfied that, having regard to the type of construction or to the use to which any industrial building is put, its life is likely to be substantially less than forty years, he may, upon the application of the person entitled to claim a deduction under this Part, increase the amount of the deduction to such an amount as he may consider just and reasonable, and all the provisions of this Part shall apply accordingly.

3. Ascertainment of residue of expenditure

In this Part, the residue of expenditure at any time shall be—

- (a) in relation to a building which had not been used before the year of income 1974, the capital expenditure incurred on the construction of the building as computed under paragraph 1 less the total of—
 - (i) any deductions made under this Part; and
 - (ii) in a case to which proviso (iv) of paragraph 1(1) applies, the amount of deductions under this part which were deducted in computing the amount of the trading receipt under paragraph 24A(3); and
 - (iii) any deductions which would have been made had the building

been an industrial building when first used.

- (b) in relation to a building which at the end of the year of income 1973 was an industrial building for the purposes of the Management Act, the residue of expenditure as ascertained under paragraph 3 of the Second Schedule to that Act less any deductions made under this Part;
- (c) in relation to a building which had been used before the end of the year of income 1973 but was not an industrial building for the purposes of the Management Act at the end of that year of income, the amount which would have been the residue of expenditure as ascertained under item (b) of this paragraph if it had always been an industrial building.

4. Sale of building prior to use

- (1) Where capital expenditure is incurred on the construction of a building and before that building is used, it is sold—
 - (a) any such expenditure actually incurred on the construction thereof shall be left out of account for the purposes of this Schedule; but
 - (b) the person who purchases the building shall be deemed to have incurred capital expenditure on the construction thereof equal to the capital expenditure actually incurred on the construction of the building or to the amount paid by him, whichever is the less:

Provided that where the building is sold more than once before such building is used, item (b) of this paragraph shall have effect only in relation to the last sale.

- (2) Where the expenditure incurred on the construction of a building was incurred by a person carrying on a business which consists, as to the whole or any part thereof, in the construction of buildings with a view to their sale and before the building is used he sells it in the course of that business or such part thereof, subparagraph (1)(b) of this paragraph shall have effect as if the reference to the capital expenditure actually incurred on the construction of the building were a reference to the price paid on such sale.

5. (1) Subject to this paragraph, in this Schedule “**industrial building**” means—

- (a) a building in use—
 - (i) for the purposes of a business carried on in a mill, factory or other similar premises; or
 - (ii) for the purposes of a transport, dock, bridge, tunnel, inland navigation, water, electricity or hydraulic power undertaking; or
 - (iii) for the purposes of a business which consists in the manufacture of goods or materials or the subjection of goods or materials to any process; or
 - (iv) for the purposes of a business which consists in the storage of goods or materials—
 - (v) for the purpose of a business consisting of ploughing or cultivating agricultural land as defined in paragraph 22 (other than land in the occupation of the person carrying on the business) or doing any other operation on such land, or threshing the crops of another person; or
 - (vi) for the purposes of a business which may be declared by the Minister by notice in the Gazette as being within the provisions of this paragraph either generally, or in relation to a particular class, or in a particular instance within that class;
- (b) a prescribed dwelling-house, that is to say a dwelling-house constructed for and occupied by employees of a business carried on by the person owning such dwelling-house, and which conforms with conditions as may be prescribed;
- (c) a building which is in use as a hotel or part of a hotel and which the Commissioner has certified to be an industrial building where such a building in use as a hotel includes any building directly related to the operations of the hotel contained within the grounds of the hotel complex, including staff quarters, kitchens, and entertainment and sporting facilities;
- (d) a building in use for the welfare of workers employed in any business or undertaking referred to in item (a) of this subparagraph;
- (e) a building in use as a hostel or an educational building, or a building in use for training, provided such building has been certified by the Commissioner for the purposes of this paragraph;
- (f) a building in use as a rental residential building where such

building is constructed in a planned development area approved by the Minister for the time being responsible for matters relating to housing;

(ff) *deleted by Act No. 57 of 2012, s. 24.*

- (2) Item (a) of subparagraph (1) of this paragraph shall apply in relation to a part of a business or undertaking as it applies in relation to a business or undertaking:

Provided that where part only of a business or undertaking complies with the conditions set out in that item, a building shall not, by virtue of this subparagraph, be an industrial building unless it is in use for the purpose of that part of the business or undertaking.

- (3) Notwithstanding subparagraph (1) and (2) but subject to subparagraph (4) of this paragraph, the expression “**industrial building**” does not include any building in use as, or as part of, a retail shop, showroom, office or dwelling-house, or for any purpose ancillary to the purposes of a retail shop, showroom or office:

Provided that this subparagraph shall not apply to a prescribed dwelling-house, or to, or to part of, a building which is a dwelling-house constructed for the occupation by persons employed in any business or undertaking referred to in subparagraph (1) of this paragraph or to a building constructed for the welfare of such persons, if such building will cease to belong to the person carrying on such business or undertaking on the coming to an end of a concession under which the business or undertaking is carried on, or if the building would have little or no value to such person if he ceased to carry on the business or undertaking on the termination of, or had little or no value to such person where the business or undertaking ceased to be carried on during, the year of income in respect of which any claim for a deduction has been made under this Part.

- (4) Where part of a building is, and part thereof is not, an industrial building and the capital expenditure which has been incurred on the construction of the second-mentioned part is not more than one-tenth of the total capital expenditure which has been incurred on the construction of the building, the whole building shall be treated as an industrial building.

- (5) In this paragraph—

“**bridge**” means a bridge, the use of which is subject to a charge or toll; and “**bridge undertaking**” shall be construed accordingly;

“**crop**” includes any form of vegetable produce;

“**dock**” includes a harbour, wharf, pier or jetty or other works in or at which vessels can ship or unship merchandise or passengers, not being a pier or jetty primarily used for recreation; and “**dock undertaking**” shall be construed accordingly;

“**electricity undertaking**” means an undertaking for the generation, transformation, conversion, transmission or distribution of electrical energy;

“**hydraulic power undertaking**” means an undertaking for the supply of hydraulic power;

“**retail shop**” includes premises of a similar character where a retail business (including repair work) is carried on;

“**undertaking**” does not include an undertaking not carried on by way of trade;

“**water undertaking**” means an undertaking for the supply of water for public consumption.

[Act No. 57 of 2012, s. 24.]

6. Interpretation

(1) A reference in this Part to the incurring of capital expenditure on the construction of a building does not include capital expenditure on the provision of machinery or on an asset which has been treated for a year of income as machinery.

(2) References in this Part to capital expenditure incurred on the construction of a building do not include capital expenditure on the acquisition of, or of rights in or over, land.

6A. Expenditure in respect of commercial building

(1) Where a person incurs capital expenditure on the construction of a commercial building to be used in a business carried on by him or his lessee on or after the 1st January, 2013, and the person has provided roads, power, water, sewers and other social infrastructure, there shall be deducted, in computing the gains or profits of that person for any year of income in which the building is so used, a deduction equal to twenty-five percent per annum.

- (2) For the purpose of this paragraph “commercial building” includes a building for use as an office, shop or showroom but shall not include a building which qualifies for deduction under any other paragraph or a building excluded for industrial building under paragraph 5(3) of this Schedule.

PART II – DEDUCTIONS IN RESPECT OF CAPITAL EXPENDITURE ON MACHINERY

8. Ascertainment of written down value

- (1) The written down value of each class of machinery referred to in paragraph 7(2) or 7(3) shall be calculated separately as at any time and shall be the amount still unallowed of capital expenditure on machinery of the class as construed in paragraph 9 of the Second Schedule to the Management Act, and as specified in paragraph 7 with the addition of the costs of capital expenditure on any machinery of that class purchased and the deduction of the amount realized on the sale of any machinery of that class sold in the year of income 1974, or any succeeding year of income, less any deductions made under this Part; and where the amount realized for machinery of any class sold in any year of income exceeds that which, but for the deduction of such amount would be the written down value of machinery of that class at the end of that year of income, the excess shall not be deducted but shall be treated as a trading receipt or, conversely, as a trading loss:

Provided that—

- (i) the cost of capital expenditure of any class of machinery in respect of which a deduction is allowable in accordance with paragraph 24, 24A or 24B shall be deemed to be that cost reduced by the amount of those deductions;
- (ii) where in any year of income an amount has, in accordance with paragraph 24A(3), been treated as a trading receipt, so much thereof as is referable to capital expenditure incurred on machinery of that class shall be deemed to be capital expenditure incurred on the purchase of machinery in that class in the year of income next succeeding that year of income.
- (2) Subject to this Part, where machinery is brought into use for the purposes of a trade without being purchased or ceases permanently to be so used without being sold, it shall be deemed to have been purchased or sold as the case may be and the cost or

amount realized shall be deemed to be the price which it would have fetched if sold in the open market.

9. Application to lessors

Where machinery is let upon terms that the burden of the wear and tear thereof falls directly upon the lessor, this Part shall apply in relation to him as if the machinery were, during the period of the letting, in use for the purposes of a business carried on by him.

10. Expenditure on buildings in connection with the installation of machinery

Where a person carrying on a business incurs capital expenditure on alterations to an existing building incidental to the installation of machinery for the purposes of the business, this Schedule shall have effect as if that expenditure were capital expenditure on the provision of that machinery and as if the works representing that expenditure formed part of that machinery.

11. Balancing deductions and balancing charges

(1) Where wear and tear deductions or investment deductions have been made in computing the gains or profits of a person under paragraph 7, 24, 24A or 24B and that person ceases to carry on the business for the purposes of which the machinery was used and the machinery cease to be owned by him, there shall be made in computing his gains or profit for the year of income in which the cessation occurs, a deduction or charge (in this Part referred to as a “balancing deduction” or a “balancing charge”); but—

(a) for the purposes of this paragraph a partnership shall be deemed not to have ceased to carry on a business unless all the partners who carried it on cease to carry it on; and

(b) where the machinery is sold by the liquidator of a company which is in the course of being wound up, the balancing deduction or balancing charge shall be made in computing the gains or profits of the company for the year of income in which the winding-up commenced; and

(c) where, in the case of a balancing deduction, the total income for a year of income before taking account of the deduction is less than the amount of the deduction, the excess may be carried back and allowed in calculating the total income of the next

preceding year of income, and so on, for as long as is necessary for the deduction to be absorbed by the total income of preceding years, not exceeding in all six in number.

- (2) Subject to this Part, where on the cessation of a trade a balancing charge is to be made under this paragraph and—
 - (a) no sale moneys are received by the person owning the machinery, or the written down value at the time of the cessation exceeds those moneys, the balancing deduction shall be the written down value at the time of cessation, or the excess thereof over those moneys, as the case may be;
 - (b) the sale moneys exceed the written down value, if any, at the time of cessation, the balancing charge shall be the amount of the excess or, where the written down value is nil, the amount of those money, as the case may be.

12. Effect in certain successions, transfers, etc.

Where a person succeeds to a business which until that time was carried on by another person, and machinery which, immediately before the succession was in use for the purposes of the business without being sold is, immediately after the succession, in use for the purposes of the business, that machinery shall, for the purposes of this Schedule, be treated as if it had been sold at the date of the succession to the person or persons carrying on the business immediately thereafter and as if the net proceeds of the sale had been the written down value of the machinery.

13. Special provisions as to certain sales

- (1) This paragraph shall have effect in relation to sales of machinery where either—
 - (a) the buyer is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them; or
 - (b) it appears with respect to the sale or with respect to transactions of which the sale is one, that the sole or main benefit which, apart from this paragraph, might have been expected to accrue to the parties or any of them was the obtaining of a deduction under this Schedule.

- (2) Where the machinery is sold at a price other than that which it would have fetched if sold in the open market, then, subject to this paragraph, the like consequences shall ensue for the purposes of this Schedule to all persons concerned as would have ensued if the machinery had been sold for the price which it would have fetched if sold in the open market.
- (3) Where the sale is one to which subparagraph (1)(a) applies and subparagraph (1)(b) does not apply, and is a sale which would give rise to a balancing charge, and the parties to the sale by notice in writing to the Commissioner so elect, then subparagraph (2) of this paragraph shall not have effect but the same consequences shall ensue to the buyer and seller as would have ensued if the price for which the machinery was sold had been the written down value; but no election shall be made in any case where either the buyer or the seller is at the time of the sale a non-resident person.

14. Private use

Where machinery owned by a person is, during a year of income, used by him for the purposes of a business carried on by him and also used by him for other purposes, then in determining the amount of a wear and tear deduction or a balancing deduction or balancing charge or an amount treated as a trading receipt or the written down value of that machinery for a year of income, regard shall be had to all the relevant circumstances of the case and in particular to the extent of the use for those other purposes and the Commissioner shall make such adjustments as he may determine to be just and reasonable.

15. Expenditure on private vehicle

- (1) For the purposes of this Schedule, where capital expenditure in excess of thirty thousand shillings was incurred on or after 1st January, 1961, in respect of a road vehicle other than a commercial vehicle or a vehicle whose purchaser is a person whose main business is the hire or sale of vehicles, and such vehicles are used exclusively for hire or as stock-in-trade, that capital expenditure shall be deemed to be thirty thousand shillings; where the road vehicle is sold the sale price shall be deemed to be such proportion of the proceeds of sale as the Commissioner may determine to be just and reasonable, having regard to the original purchase price and the proportion thereof deemed under this paragraph to be capital expenditure.
- (2) Where capital expenditure of a kind referred to in subparagraph (1) was incurred on or after 1st January, 1981, that subparagraph shall be read as though the expression “seventy-five thousand

shillings” were substituted for “thirty thousand shillings” wherever the later expression occurs.

- (3) Where capital expenditure of a kind referred to in subparagraph (1) is incurred on or after the 1st January, 1990, that subparagraph shall be read as though the expression “one hundred thousand shillings” were substituted for “thirty thousand shillings” wherever the later expression occurs.
- (4) Where capital expenditure of a kind referred to in subparagraph (1) is incurred on or after the 1st January, 1997, that subparagraph shall be read as though the expression “five hundred thousand shillings” were substituted for “thirty thousand shillings” wherever the latter expression occurs.
- (5) Where capital expenditure of a kind referred to in subparagraph (1) is incurred on or after the 1st January, 1998, that subparagraph shall be read as though the expression “one million shillings” were substituted for “thirty thousand shillings” wherever the latter expression occurs.
- (6) Where capital expenditure of a kind referred to in subparagraph (1) is incurred on or after the 1st January, 2006, that subparagraph shall be read as though the expression “two million shillings” were substituted for “thirty thousand shillings” wherever the latter expression occurs.

PART III – DEDUCTIONS IN RESPECT OF MINING
OPERATIONS

16 – 21. Deleted by Act No. 16 of 2014, s. 21.

PART IV – DEDUCTIONS IN RESPECT OF CAPITAL
EXPENDITURE ON AGRICULTURAL LAND

22. Deductions in respect of capital expenditure on farm works

(1) Subject to this Schedule, where in a year of income the owner or tenant of agricultural land incurs capital expenditure on the construction of farm works there shall be made, in computing his gains or profits for that year of income and the four following years of income, a deduction equal to one-fifth of that expenditure:

Provided that—

- (a) where in any year of income commencing on or after 1st January, 1985, the owner or tenant of agricultural land incurs capital expenditure on the construction of farm works there shall be made, in computing his gains or profits for that year of income and the two following years of income, a deduction equal to one third of that expenditure;
 - (b) where in any year of income commencing on or after 1st January, 2007, the owner or tenant of agricultural land incurs capital expenditure on the construction of farm works, there shall be made, in computing his gains or profits for that year of income and the following year of income, a deduction equal to one-half of that expenditure;
 - (c) where in any year of income commencing on or after 1st January, 2011, the owner or tenant of agricultural land incurs capital expenditure on the construction of farmworks, there shall be made, in computing his gains or profits for that year of income, a deduction equal to a hundred per cent of that expenditure.
- (2) No capital expenditure shall be taken into account for the purposes of this paragraph unless it is incurred for the purposes of husbandry on the agricultural land in question.

- (3) Where the capital expenditure—
- (a) is on a farm-house, one-third only of the expenditure shall be taken into account or, if the accommodation and amenities of the farmhouse are out of due relation to the nature and extent of the farm, such lesser proportion thereof as the Commissioner may determine to be just and reasonable;
 - (b) is incurred on assets other than a farmhouse, being an asset which is to serve partly the purposes of husbandry and partly other purposes, then only such proportion thereof as the Commissioner may determine to be just and reasonable shall be taken into account for the purposes of this paragraph.
- (4) Where a person (the “transferor”) would, if he continued to be the owner or tenant, as the case may be, of any agricultural land, be entitled to a deduction under this paragraph in respect of capital expenditure and the whole of his interest in the land in question, or in any part of such land, is transferred, whether by operation of law or otherwise, to some other person, (the “transferee”)—
- (a) the amount of the deduction, if any, for the year of income in which the transfer takes place, shall be apportioned in such manner as the Commissioner may determine to be just and reasonable between the transferor and the transferee; and
 - (b) the transferee shall, to the exclusion of the transferor, be entitled, where the interest transferred is in the whole of the land, to the whole of the deduction for any subsequent year of income, and where the interest transferred is in part only of the land, to so much of the deduction as the Commissioner may determine to be just and reasonable.
- (5) For the purposes of subparagraph (4) of this paragraph where an interest in land is a leasehold interest and that leasehold interest comes to an end, then such interest shall be deemed to have been transferred—
- (a) if an incoming tenant makes a payment to the outgoing tenant in respect of assets representing the expenditure in question, to the incoming tenant; and
 - (b) in any other case, to the owner of the interest in immediate reversion on the leasehold interest.
- (6) Where the amount of a deduction under this Part has been in any

manner varied for any year, then deductions for subsequent years of income shall be so adjusted that the sum of deductions for all years of income shall not exceed the expenditure.

23. Definitions for Part IV

In this Part—

“agricultural land” means land occupied wholly or mainly for the purposes of a trade of husbandry;

“farm works” means farmhouses, labour quarters, any other immovable buildings necessary for the proper operation of the farm, fences, daps, drains, water and electricity supply works other than machinery, windbreaks, and other works necessary for the proper operation of the farm.

PART V – INVESTMENT DEDUCTIONS

24. Buildings and machinery

- (1) Subject to this Schedule, where capital expenditure is incurred—
 - (a) on the construction of a building and on the purchase and installation therein of new machinery, and the owner of that machinery, being also the owner or lessee of that building, uses that machinery in that building for the purposes of manufacture; or
 - (b) on the purchase and installation of new machinery in a part of a building other than a building or part thereof previously used for the purposes of manufacture, and—
 - (i) the owner of the new machinery subsequently uses that machinery in that building for the purposes of manufacture; and
 - (ii) the machinery has not been installed substantially in replacement of machinery previously in use in an existing business carried on by the owner of that new machinery;
 - (c) on or after the 1st January, 1992 on the construction of a building where the owner or the lessee of that building uses the building for the purpose of manufacture; or

(d) on or after the 1st January, 1992 on the purchase and installation or otherwise setting up the machinery for use as may be appropriate for the type of machine, of machinery to be used for the purpose of manufacture; or

(dd) on or after 1st January 2005, on the purchase of machinery which is subsequently leased and used for the purpose of manufacture;

(e) on the construction of a hotel building which is certified as an industrial building under paragraph 5(1)(c);

(f) on the construction of a building or purchase and installation of machinery outside the City of Nairobi or the Municipalities of Mombasa or Kisumu whereof the value of the investment is not less than two hundred million shillings;

(g) on the purchase of filming equipment by a local film producer licensed by the Minister responsible for matters relating to communication;

(h) on the construction of transportation and storage facilities for petroleum products by the Kenya Pipeline Company Limited,

there shall be deducted, in computing the gains or profits of the person incurring that expenditure for the year of income in which they were first used (thereinafter referred to as “the year of first use”), either both the building and machinery referred to in subparagraph (a) or both the machinery and, for the purpose of manufacture, the part of the building in which that machinery has been installed referred to in subparagraph (b) or the building referred to in subparagraph (c), provided that, prior to its first being used for manufacture after its completion, it has been used for no other purpose, or the machinery referred to in subparagraph (d) or (dd), or the building referred to in subparagraph (e) or the building or machinery referred to in subparagraph (f), or machinery referred to in paragraph (g), as the case may be, a deduction referred to as an investment deduction;

(2) The amount of the investment deduction under subparagraph (1) shall—

(a) where the construction, installation or use, as the case may be, occurs outside the municipalities of Nairobi or Mombasa, be equal to the percentage of the capital expenditure applicable in accordance with the following table:

Where the year or of first use is any year of income or accounting year commencing on or after	Percentage of the Capital Expenditure
1st January, 1988	60%
1st January, 1989	75%
1st January, 1990	85%
1st January, 1995	60%
1st July, 2000	100%
1st January, 2002	85%
1st January, 2003	70%
1st January, 2004	100%
1st January, 2005	100%
1st January, 2006	100%
1st January, 2007	100%
1st January, 2008	100%

- (b) where the construction, installation or use, as the case may be, occurs within the municipalities of Nairobi and Mombasa, be equal to the percentage of the capital expenditure applicable in accordance with the following table:

Where the year or of first use is any year of income or accounting year commencing on or after	Percentage of the Capital Expenditure
1st January, 1988	10%
1st January, 1989	25%
1st January, 1990	35%
1st January, 1995	60%
1st July, 2000	100%
1st January, 2002	85%

1st January, 2003	70%
1st January, 2004	100%
1st January, 2005	100%
1st January, 2006	100%

- (c) in the case of an investment referred to in subparagraph (1)(f), be equal to one hundred and fifty per cent of the capital expenditure;
- (d) in the case of the equipment referred to in subparagraph (1)(g), be equal to one hundred per cent of the capital expenditure.
- (3) For the purposes of this paragraph—
- (a) where, under paragraph 24(1)(a) or 24(1)(c) a building is used partly for the purposes of manufacture and partly for other purposes, the capital expenditure on which the deduction in respect of the building is calculated shall be the capital expenditure attributable to that portion of the building which is used for the purposes of manufacture; but where the capital expenditure so attributable exceeds nine-tenths of the total capital expenditure incurred on the construction of the building the whole building shall be treated as used for the purposes of manufacture;
- (b) where an existing building is extended by further construction, the extension shall be treated as a separate building;
- (c) capital expenditure incurred on the construction of a building does not include capital expenditure on the acquisition of, or of rights in or over, any land;
- (d) **“building”** includes any building structure and where the building is used for the purposes of manufacture it includes the civil works and structures deemed to be part of an industrial building under paragraph 1(1A) of this Schedule;
- (e) in the case referred to in paragraph 5(1)(f) for the year commencing on or after the 1st January, 2008, five per cent;
- “installation”** means affixing to the fabric of a building in a manner necessary for and appropriate to the proper operation of the machinery concerned;

“machinery” means machinery and equipment used directly in the process of manufacture, and includes machinery and equipment used for the following ancillary purposes—

- (i) generation, transformation and distribution of electricity;
- (ii) clean-up and disposal of effluents and other waste products;
- (iii) reduction of environmental damage; and
- (iv) water supply or disposal;
- (v) workshop machinery for the maintenance of the machinery; **“manufacture”** means the making (including packaging) of goods or materials from raw or partly manufactured materials or other goods or the generation of electrical energy for supply to the national grid or the transformation and distribution of electricity through the national grid but does not extend to any activities which are ancillary to manufacture such as design, storage, transport or administration;

“new” means not having previously been used by any person, or acquired or held (other than by a supplier in the normal course of trade) by any person for use by the person incurring expenditure under this paragraph.

24A Capital expenditure on buildings and machinery for purposes of manufacture under bond

- (1) Subject to this Schedule, where capital expenditure is incurred—
- (a) on or after 1st January, 1988, on the construction of a building and on the purchase and installation therein of new machinery and the owner of that machinery being also the owner of that building uses that machinery for the purposes of manufacture under bond; or
 - (b) on or after 1st January, 1996, on the purchase and installation of machinery to be used for the purposes of manufacture under bond,

there shall be deducted in computing the gains or profits of the person incurring that expenditure for the year of income in which the building and machinery referred to in paragraph (a) or the machinery referred to in paragraph (b) was first used for

manufacture under bond, a deduction referred to as an investment deduction.

(2) The amount of the investment deduction under subparagraph (1) shall be equal to—

(a) seventy-five per cent of that capital expenditure where that manufacture is carried on within the municipalities of Nairobi or Mombasa; or

(b) twenty-five per cent of that capital expenditure where that manufacture is carried on elsewhere.

(2A) The amount of investment deduction under subparagraph (2A) commencing on or after the 1st January, 1990 shall be equal to—

(a) sixty-five per cent of that capital expenditure where that manufacture is carried on within the municipalities of Nairobi or Mombasa; or

(b) fifteen per cent of that capital expenditure where that manufacture is carried on elsewhere.

(2B) The amount of investment deduction under subparagraph (2) shall be equal to the percentage of the capital expenditure applicable in accordance with the following table:

Where the year or of first use is any year of income or accounting year commencing on or after *Percentage of the Capital Expenditure*

1st January, 1995	40%
1st July, 2000	Nil
1st January, 2002	15%
1st January, 2003	30%
1st January, 2004	40%
1st January, 2005	Nil
1st January, 2006	Nil
1st January, 2007	Nil
1st January, 2008	Nil

- (3) The deduction allowable under subparagraph (2A) or (2B) shall be in addition to any deduction under paragraph 24:

Provided that where the person incurring that capital expenditure ceases to be eligible to engage in manufacture under bond within three years of the date on which that manufacture was commenced, an amount equal to the deduction allowed under this Part reduced by any deductions which might have been deductible in respect of that capital expenditure under Part I and Part II if a deduction under this Part had not been allowable, shall be taken into account as a trading receipt in computing the gains and profits of that person for the year of income in which he ceases to be eligible to engage in the manufacture under bond.

- (4) (a) Capital expenditure incurred in the construction of a building does not include capital expenditure incurred on the acquisition of, or of rights in or over, land;
- (b) **“building”**, **“installation”** and **“new”** shall have the meaning ascribed to those words in paragraph 24(3)(d) of this Schedule;
- (c) **“Manufacture under bond”** shall have the meaning ascribed to these words in section 2(1) of the Customs and Excise Act (Cap. 472).

24B. Capital expenditure on buildings and machinery for use in an export processing zone

- (1) Subject to this Schedule, where capital expenditure is incurred on or after the 1st January, 1992 on the construction of a building or on the purchase and installation of machinery by or for an export processing zone enterprise for use in an export processing zone for the purpose of carrying out the business activities for which that enterprise was licensed as an export processing zone enterprise within the first twenty years starting with the year in which that enterprise first became exempt from corporation income tax under paragraph 2(e) of the Third Schedule of this Act a deduction, referred to as an investment deduction, equal to one hundred per cent of the capital expenditure may be taken at the discretion of the enterprise against the gains or profits of that enterprise in the year in which the building or machinery is first used.

- (2) During the twenty year period specified in subparagraph (1), sections 24 and 24A shall not apply to an export processing zone enterprise.
- (3) Capital expenditure incurred in the construction of building does not include capital expenditure incurred on the acquisition of, or rights in or over, land.

24C. Capital expenditure on buildings and machinery for use in a Special Economic Zone

Subject to this Schedule, where capital expenditure is incurred on the construction of a building or on the purchase and installation of machinery by or for a Special Economic Zone Enterprise for use by the enterprise in carrying out the business activities for which it was licensed, the enterprise shall be entitled to an investment deduction, equal to one hundred percent of the capital expenditure, against the gains or profits of that enterprise in the year in which the building or machinery is first used.

24D. Capital expenditure on buildings and machinery for use in a Special Economic Zone outside Nairobi and Mombasa Counties

Subject to this Schedule, where capital expenditure is incurred on the construction of a building or on the purchase and installation of machinery by or for a Special Economic Zone Enterprise located outside Nairobi and Mombasa Counties, for use by the enterprise in carrying out the business activities for which it was licensed, the enterprise shall be entitled to an investment deduction, equal to one hundred and fifty percent of the capital expenditure, against the gains or profits of that enterprise in the year in which the building or machinery is first used.

25. Shipping

Subject to this Schedule, where a resident person carrying on the business of a shipowner incurs capital expenditure to which this Schedule applies—

- (a) on the purchase of a new and hitherto unused power-driven ship of more than 125 tons gross; or
- (b) on the purchase, and subsequent refitting for the purposes of such business, of a used power-driven ship of more than 125 tons,

there shall be deducted in computing his gains or profits for the year of income in which the ship is first used in such business a deduction (referred to as a shipping investment deduction) equal to one hundred per cent of that capital expenditure, but—

- (a) not more than one shipping investment deduction shall be allowed in respect of the same ship;
- (b) *deleted by Act No. 13 of 1975, s. 2;*
- (c) where a ship in respect of which a shipping investment deduction has been given, is sold within a period of five years from the end of the year of income in which the deduction was given, the deduction shall be withdrawn and treated as income of the vendor for the year of income in which the sale takes place.

26. Sale of buildings prior to use

Where capital expenditure is incurred on the construction of a building to which paragraph 24(1)(a), (c), (e) or (f) applies and which is sold before it is first used then the provisions of paragraph 4 shall apply.

PART VI — MISCELLANEOUS PROVISIONS

27. Apportionment of consideration for sale, exchanges, etc., of any property or of lease hold interests

- (1) (a) Any reference in this Schedule to the sale of property includes a reference to the sale of that property together with any other property, and, where property is sold together with other property, so much of the net proceeds of the sale of the whole property as the Commissioner may determine to be just and reasonable as properly attributable to the first mentioned property shall, for the purposes of this Schedule, be deemed to be the net proceeds of the sale of the first mentioned property, and references to expenditure incurred on the provision or the purchase of property shall be construed accordingly.
- (b) For the purposes of this paragraph all the property which is sold in pursuance of one bargain shall be deemed to be sold together, notwithstanding that separate prices are, or purport to be, agreed for separate items of that property or that there are, or purport to be, separate sales of separate items of that property.

- (2) Subparagraph (1) of this paragraph shall, with the necessary adaptations, apply in relation to other sale moneys as they apply in relation to the net proceeds of sales.
- (3) This Schedule shall have effect as if a reference therein to the sale of property included a reference to the exchange of property and, in the case of a leasehold interest, also included a reference to the surrender thereof for valuable consideration, and any provisions of this Schedule referring to sales shall have effect accordingly with the necessary adaptations and, in particular with the adaptations that references to the net proceeds of sale and to the price shall be taken to include references to the consideration for the exchange or surrender and references to capital sums included in the price shall be taken to include references to so much of the consideration as would have been a capital sum if it had taken the form of a money payment.

28. Interpretation of certain references to expenditure

- (1) Unless the context otherwise requires, references in this Schedule to capital expenditure and capital sums in relation to the person incurring such expenditure, or paying such sums, do not include any expenditure or sum which is deductible otherwise than under this Schedule for the purpose of ascertaining his total income.
- (2) Any reference in this Schedule to the date on which expenditure is incurred shall be construed as a reference to the date when the sum in question becomes payable.

29. Subsidies

- (1) Expenditure shall not be regarded for any of the purposes of this Schedule as having been incurred by a person in so far as it has been, or is to be met directly or indirectly by any Government or a local authority or by any person, whether in Kenya or elsewhere, other than the first mentioned person.
- (2) In considering whether, for the purposes of this Schedule, any expenditure has been met or is to be met directly or indirectly by anyone other than the person incurring the expenditure, there shall be left out of account—
 - (a) any insurance, moneys or other compensation moneys payable in respect of an asset which has been demolished, destroyed or put out of use; and

-
- (b) any expenditure met, or to be met, by a person, other than a Government or a local authority, being expenditure in respect of which, apart from this item, no deduction could be made under subparagraph (3) of this paragraph.
 - (3) Where a person, for the purposes of a business carried on or to be carried on by him or by a tenant of land in which he has an interest, contributes a capital sum (hereinafter referred to as a contribution) to expenditure on the provision of an asset being expenditure which, apart from subparagraph (1) of this paragraph, would have been regarded as wholly incurred by another person and in respect of which, apart from that subparagraph, a deduction would have been made under this Schedule, then, subject to this paragraph, such deductions, if any, shall be made to the contributor as would have been made to him if his contribution had been expenditure on the provision, for the purposes of that business, of a similar asset.
 - (4) Subject to this Schedule, the amount of the deductions and the manner in which they are to be made shall be determined on the following basis—
 - (a) the asset shall be deemed to continue at all material times to be in use for the purposes of the business;
 - (b) where the asset is machinery and, when the contribution was made, the business was carried on or was to be carried on by a tenant of land in which the contributor has an interest, the contributor shall be deemed to have let the machinery to such tenant on terms that the burden of the wear and tear thereof falls directly on the contributor.
 - (5) Where, when the contribution was made, the business for the purposes of which it was made was to be carried on or was to be carried on by the contributor, then, on a transfer of the business or any part thereof—
 - (a) where the transfer is of the whole business, the deductions thereafter shall be made to the transferee;
 - (b) where the transfer is of part only of the business, item (a) shall have effect with respect to so much of the deduction as the Commissioner may determine is properly referable to the part of the business transferred.

(6) Where, when the contribution was made, the business was carried on or was to be carried on by any tenant of land in which the contributor had an interest, the deduction for a year of income shall be made to the person who is entitled to the interest of the contributor in the land.

30. Prevention of double allowances

If a deduction is made under any Part in respect of any property, or in respect of capital expenditure on any property, in computing the gains or profits of a person for a year of income then, to the extent to which that deduction has been made, no further deduction shall be made under that Part or any other Part or under any other provision of this Act in respect of, or in respect of capital expenditure on, that property in ascertaining the total income of that person for the same or a previous or subsequent year of income.

31. Increase of deductions

The amount of a deduction made under this Schedule may be increased to such an amount as may be prescribed by the Commissioner either generally, or in relation to a particular class of business, or in a particular instance.

31A. Where a person incurs capital expenditure on the purchase of machinery or on the construction of roads, bridges or similar infrastructure under a concessionairing arrangement, the deduction shall be spread and claimed in equal proportion over the period of the concession:

Provided that the period of concession shall be deemed to commence—

(a) in the case of machinery, in the year in which the machinery is first put into use;

(b) in the case of a road, bridge or similar infrastructure, in the year in which it is first put into use after completion.

31B. Subject to this Schedule, where a person incurs capital expenditure on the purchase or acquisition of the right to the use of a computer software, there shall be deducted, in computing his gains or profits for the year of income in which the software is first used and for subsequent years of income, an amount equal to one-fifth of that expenditure.

32. Other provisions as to interpretation

(1) In this Schedule, unless the context otherwise requires—

“**approved business**” *deleted by Act No. 2 of 1975, s. 5;*

“**control**”, in relation to a body corporate, means the power of a person to secure, by means of the holding of shares or the possession of voting power in or in relation to that or another body corporate, or by virtue of powers conferred by the articles of association or other document regulating that or another body corporate, that the affairs of the first mentioned body corporate are conducted in accordance with the wishes of that person; and in relation to a partnership, means the right to a share of more than one-half of the assets or of more than one-half of the income of the partnership:

Provided that in the case of a body corporate, unless otherwise expressly provided for by the articles of association or other documents regulating it “**control**” shall mean the holding of shares or voting power of twenty-five per cent or more;

“**income**” includes an amount on which a charge to tax is authorized to be made under this Act;

“**lease**” includes an agreement for a lease where the term to be covered by the lease has begun and a tenancy but does not include a mortgage;

“**machinery**” includes ships and plant used in carrying on a business;

“**sale moneys**” means, in relation to—

- (a) a sale of property, the net proceeds of the sale;
- (b) the coming to an end of an interest in property, compensation payable in respect of that property;
- (c) the demolition or destruction of property, the net amount received for the remains of the property, together with insurance or salvage moneys received in respect of the demolition or destruction and other compensation of any description received in respect thereof, in so far as that compensation consists of capital sums.

- (2) Any reference in this Schedule to any building, machinery, works, asset or farmhouse shall, except where the reference is to the whole of a building, be construed as including a reference to a part thereof.
- (3) Any reference in this Schedule to the time of a sale shall be construed as a reference to the time of completion or the time when possession is given, whichever is the earlier.
- (4) For the purposes of this Schedule the price which any property would have fetched if sold in the open market shall be determined by the Commissioner.
- (5) Where any income of an accounting period ending on some day other than the last day of a year of income is taken into account for the purpose of ascertaining total income for a year of income, then any reference in this Schedule to year of income shall be construed as a reference to that accounting period:

Provided that but where a deduction under this Schedule is related to a year of income and any income of an accounting period is so taken into account then, if that accounting period is more or less than twelve months, the amount of such deduction shall be proportionately increased or decreased, as the case may be.

33. For the purposes of this Schedule, "hotel" means a hotel which has been classified as such by the Minister for the time being responsible for matters relating to tourism.

Third Schedule to Cap. 470 which it is proposed to amend—

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.

Head B (Rates of Tax) of the Third Schedule to Cap. 470 which it is proposed to amend—

1. The individual rates of tax shall be—

	<i>Rate in each shilling</i>
On the first Shs. 147,580	10%
On the next Shs. 139,043	15%
On the next Shs. 139,043	20%
On the next Shs. 139,043	25%
On all income over Shs. 564,709	30%

1A. The wife's employment, wife's professional and wife's self employment income rates of tax shall be —

	<i>Rate in each shilling</i>
On the first Shs. 147,580	10%
On the next Shs. 139,043	15%
On the next Shs. 139,043	20%
On the next Shs. 139,043	25%
On all income over Shs. 564,709	30%

Paragraph 3(d) of the Third Schedule to Cap. 470 which it is proposed to amend—

(d) in respect of a dividend, ten per cent of the amount payable:

Provided that the rate applicable to citizens of the East African Community Partner States in respect of dividend shall be five per cent of the gross sum payable;

Paragraph 3(p) of the Third Schedule to Cap. 470 which it is proposed to amend—

(p) an insurance premium, five per cent of the gross amount payable.

Paragraph 5(d) of the Third Schedule to Cap. 470 which it is proposed to amend—

(d) (i) in respect of a payment of a pension or any withdrawal made after the expiry of fifteen years from the date of joining the fund, or on the attainment of the age of fifty years, or upon earlier retirement on the grounds of ill-health or infirmity of body and mind, from a registered pension fund, registered provident fund, the National Social Security Fund or a

registered individual retirement fund, in excess of the tax free amounts specified under section 8(4) and 8(5) in any one year and, provided that tax has not been deducted under section 37— 10% on the first Shs. 400,000 15% on the next Shs. 400,000 20% on the next Shs. 400,000 25% on the next Shs. 400,000 30% on any amount over Shs. 1,600,000 of the amount in excess of the tax free amount: Provided that the tax so deducted shall be final;

- (ii) in respect of a withdrawal before the expiry of fifteen years from a registered pension fund, registered provident fund, the National Social Security Fund or a registered individual retirement fund in excess of the tax free amounts specified under section 8(4) and 8(5) in any one year— On the first Shs. 147,580 10% On the next Shs. 139,043 15% On the next Shs. 139,043 20% On the next Shs. 139,043 25% On all income over Shs. 564,709 ... 30%
- (iii) in respect of surplus funds withdrawn by or refunded to an employer in respect of registered pension or registered provident funds, thirty per cent of the gross sum payable;

Paragraph 9 of the Third Schedule to Cap. 470 which it is proposed to amend—

- 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.

Section 5 of No. 35 of 2013 which it is proposed to amend—

- 5. 1) A tax, to be known as value added tax, shall be charged in accordance with the provisions of this Act on—
 - (a) a taxable supply made by a registered person in Kenya;
 - (b) the importation of taxable goods; and
 - (c) a supply of imported taxable services.
- (2) The rate of tax shall be—
 - (a) in the case of a zero-rated supply, zero per cent; or
 - (aa) in the case of goods listed in section B of Part I of the First Schedule, eight percent 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 (No. 2) Act, 2018.
- (b) in any other case, sixteen per cent of the taxable value of the taxable supply, the value of imported taxable goods or the value of a supply of imported taxable services.
- (3) Tax on a taxable supply shall be a liability of the registered person making the supply and, subject to the provisions of this Act relating to accounting and payment, shall become due at the time of the supply.
- (4) The amount of tax payable on a taxable supply, if any, shall be recoverable by the registered person from the receiver of the supply, in addition to the consideration.
- (5) Tax on the importation of taxable goods shall be charged as if it were duty of customs and shall become due and payable by the importer at the time of importation.

Section 16 of No. 35 of 2013 which it is proposed to amend—

16. (1) Where goods are returned to the registered person or, for good and valid reason the registered person decides for business reasons, to reduce the value of a supply after the issue of a tax invoice, a credit note shall be issued for the amount of the reduction: Provided that a credit note may be issued only within six months after the issue of the relevant tax invoice.
- (2) A registered person who issues a credit note under this section shall reduce the amount of his output tax in the tax period in which the credit note was issued by an amount that bears the same proportion to the tax originally charged as the amount credited bears to the total amount originally charged and the amount of tax so credited shall be specified on the credit note.
- (3) A registered person who receives a credit note for the supply in respect of which he has claimed deductible input tax, shall reduce the amount of deductible input tax in the month in which the credit note is received, by the amount of tax credited.
- (4) Where a registered person has issued a tax invoice in respect of a taxable supply and subsequently makes a further charge in respect of

that supply, or any transaction associated with that supply, the person shall, in respect of the further charge being made, issue a debit note, and shall show on it the details of the tax invoice issued at the time of the original supply.

(5) A registered person who receives a debit note issued in compliance with subsection (4) may, if the supply is eligible therefor and in so far as it has not previously been claimed, claim as deductible input tax such further amount of tax that is being charged, in the month in which the further charge was made, or in the next subsequent month.

(6) A credit or debit note issued under this section shall be in the prescribed form.

Section 31(1) of No. 35 of 2013 which it is proposed to amend—

31. Refund of tax on bad debts

(1) Where a registered person has made a supply and has accounted for and paid tax on that supply but has not received any payment from the person liable to pay the tax, he may, after a period of three years from the date of that supply or where that person has become legally insolvent, apply to the Commissioner for a refund of the tax involved and subject to the regulations, the Commissioner may

refund the tax: Provided that no application for a refund shall be made under this section after the expiry of five years from the date of the supply.

(2) Where the tax refunded under subsection (1) is subsequently recovered from the recipient of the supply, the registered person shall refund the tax to the Commissioner within thirty days of the date of the recovery.

(3) If payment is not made within the time specified under subsection (2), an interest of two per cent per month or part thereof of the tax refunded shall forthwith be due and payable: Provided that the interest payable shall not exceed one hundred per cent of the refunded amount.

Section 43(1) of No. 35 of 2013 which it is proposed to amend—

43. (1) Every registered person shall, for the purposes of this Act, keep in the course of his business, a full and true written record, whether in electronic form or otherwise, in English or Kiswahili of every transaction he makes and the record shall be kept in Kenya for a period of five years from the date of the last entry made therein.

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- (2) The records to be kept under subsection (1) shall include—
- (a) copies of all tax invoices and simplified tax invoices issued in serial number order;
 - (b) copies of all credit and debit notes issued, in chronological order;
 - (c) purchase invoices, copies of customs entries, receipts for the payment of customs duty or tax, and credit and debit notes received, to be filed chronologically either by date of receipt or under each supplier's name;
 - (d) details of the amounts of tax charged on each supply made or received and in relation to all services to which section 10 applies, sufficient written evidence to identify the supplier and the recipient, and to show the nature and quantity of services supplied, the time of supply, the place of supply, the consideration for the supply, and the extent to which the supply has been used by the recipient for a particular purpose;
 - (e) tax account showing the totals of the output tax and the input tax in each period and a net total of the tax payable or the excess tax carried forward, as the case may be, at the end of each period;
 - (f) copies of stock records kept periodically as the Commissioner may determine;
 - (g) details of each supply of goods and services from the business premises, unless such details are available at the time of supply on invoices issued at, or before, that time; and
 - (h) such other accounts or records as may be specified, in writing, by the Commissioner.
- (3) Every person required under subsection (1) to keep records shall, at all reasonable times, avail the records to an authorised officer for inspection and shall give the officer every facility necessary to inspect the records.
- (4) For the purposes of this section, the Commissioner may, in accordance with the regulations, require any person to use an electronic tax register, of such type and description as may be prescribed, for the purpose of accessing information regarding any matter or transaction which may affect the tax liability of the person.
- (5) A person who contravenes any of the provisions of this section commits an offence.

First Schedule to No. 35 of 2013 which it is proposed to amend—

PART I – GOODS

EXEMPT SUPPLIES

SECTION A

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

1. Bovine semen of tariff No. 0511.10.00.
2. Fish eggs and roes of tariff No. 0511.91.10.
3. Animal semen other than bovine of tariff No. 0511.99.10.
4. Soya beans, whether or not broken of tariff Nos. 1201.10.00 and 1201.90.00
5. Groundnuts, not roasted or otherwise cooked, in shell of tariff No. 1202.41.00.
6. Groundnuts, not roasted or otherwise cooked, shelled, whether or not broken of tariff No. 1202.42.00.
7. Copra of tariff No. 1203.00.00.
8. Linseed, whether or not broken of tariff No. 1204.00.00
9. Low erucic acid rape or colza seeds of tariff No. 1205.10.00.
10. Other rape or colza seeds of tariff No. 1205.90.00.
11. Sunflower seeds, whether or not broken of tariff No. 1206.00.00.
12. Cotton seeds, whether or not broken of tariff Nos. 1207.21.00 and 1207.29.00.
13. Sesamum seeds, whether or not broken of tariff No. 1207.40.00.
14. Mustard seeds, whether or not broken of tariff No. 1207.50.00.
15. Safflower seeds, whether or not broken of tariff No. 1207.60.00.
16. Other oil seeds and oleaginous fruits, whether or not broken of tariff No. 1207.99.00.
17. Pyrethrum flower of tariff No. 1211.90.20.
- 17A. Sugarcane of tariff No. 1212.93.00.
- 17B. Unprocessed produce of plant species *camellia sinensis*.
18. Live Animals of Chapter 1.

- 19.** Meat and edible meat offals of chapter 2 excluding those of tariff heading 0209 and 0210.
- 20.** Fish and crustaceans, molluscs and other aquatic invertebrates of Chapter 3 excluding those of tariff heading 0305, 0306 and 0307.
- 21.** Unprocessed milk.
- 22.** Fresh birds eggs in shell.
- 23.** Edible Vegetables and certain roots and tubers of Chapter 7, excluding those of tariff heading 0711.
- 24.** Edible fruits and nuts, peel of citrus fruits or melon of Chapter 8 excluding, those of tariff heading 0811, 0812, 0813 and 0814.
- 25.** Cereals of Chapter 10, excluding seeds of tariff heading 1002.
- 26.** Fertilisers of Chapter 31.
- 27.** Plants and machinery of Chapter 84 and 85 used for the manufacture of goods.
- 28.** Deleted by Act No. 10 of 2018, s. 19(a) (iii).
- 29.** Taxable supplies, excluding motor vehicles, imported or purchased for direct and exclusive use in the construction of a power generating plant, by a company, to supply electricity to the national grid approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for energy.
- 30.** Taxable supplies, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration, by a company granted prospecting or exploration license in accordance with Geothermal Resources Act, (No. 12 of 1982), production sharing contracts in accordance with the provisions of Petroleum (Exploration and Production) Act (Cap. 308) or mining license in accordance with the Mining Act (Cap. 306), upon recommendation by the Cabinet Secretary responsible for energy or the Cabinet Secretary responsible for mining, as the case may be.
- 30A.** Taxable supplies, procured locally or imported for the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes as approved by the Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for liquefied petroleum gas.
- 31.** Deleted by Act No. 15 of 2017, s. 9(a)(i).
- 32.** Syringes, with or without needles of tariff no. 9018.31.00.

- 33.** Disposable plastic syringes of tariff No. 9018.31.10.
- 34.** Other syringes with or without needles of tariff No. 9018.31.90.
- 35.** Tubular metal needles and needles for sutures of tariff No. 9018.32.00.
- 36.** Catheters, cannulae and the like of tariff No. 9018.39.00.
- 37.** Blood bags.
- 38.** Blood and fluid infusion sets.
- 39.** (1) Subject to paragraphs (2) and (3), materials, articles and equipment, including motor vehicles, which—
- (a) are specially designed for the sole use by disabled, blind and physically handicapped persons;
- (b) are intended for the educational, scientific or cultural advancement of the disabled for the use of an organisation approved by the national Government for purposes of exemption.
- (2) The exemption under paragraph (1) shall only apply—
- (a) once in every four years in respect of motor vehicles; and
- (b) to a person who has not enjoyed another exemption under the provisions of this Act.
- (3) Paragraph (1)(b) does not apply to motor vehicles.
- 2941.20.00 Streptomycins and their derivatives; salts thereof.
- 2941.30.00 Tetracyclines and their derivatives; salts thereof.
- 2941.40.00 Chloramphenicol and its derivatives; salts thereof.
- 2941.50.00 Erythromycin and its derivatives; salts thereof.
- 2941.90.00 Other antibiotics.
- 3001.20.00 Extracts of glands or other organs or of their secretions
- 3001.90.10 Heparin and its salts.
- 3001.90.90 Other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included.
- 3002.10.00 Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes.
- 3003.20.00 Medicaments containing other antibiotics not put up in measured doses or in forms or packings for retail sale.
- 3003.31.00 Medicaments containing insulin, not put up in measured doses or in forms or packings for retail sale.

3004.31.00 Medicaments containing insulin put up in measured doses or in forms or packings for retail sale.

3005.10.00 Adhesive dressings and other articles having an adhesive layer impregnated or coated with pharmaceutical substances or put in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.

3005.90.10 White absorbent cotton wadding, impregnated or coated with pharmaceutical substances, or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.

3005.90.90 Other wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.

3006.10.00 Sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure, sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics.

3006.20.00. Blood-grouping reagents.

3006.30.00 Opacifying preparations for X-ray examinations; diagnostic reagents designed to be administered to the patient.

3006.40.00 Dental cements and other dental fillings; bone reconstruction cements.

3006.50.00 First-aid boxes and kits.

3006.60.00 Chemical contraceptive preparations based on hormones or spermicides.

3006.70.00 Gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments.

3006.91.00 Appliances identifiable for ostomy use.

3006.92.00 Waste pharmaceuticals.

8309.90.90 Aluminium pilfer proof caps with EPE liner.

8407.10.00 [Act No. 14 of 2015, s. 5(a)(ii).]

8409.10.00 [Act No. 14 of 2015, s. 5(a)(ii).]

8802.11.00 Helicopters of an unladen weight not exceeding 2,000 kg.

8802.12.00 Helicopters of an unladen weight exceeding 2,000 kg.

8802.20.00 Aeroplanes and other aircraft, of unladen weight not exceeding 2,000 kg.

8802.30.00 Aeroplanes and other aircrafts on unladen weight exceeding 2,000 kgs but not exceeding 15,000 kg.

8802.40.00 Aeroplanes and other Aircraft of unladen weight exceeding 15,000 kgs.

8803.30.00 Other parts of aeroplanes helicopters.

8802.60.00 Spacecraft (including satellites) and suborbital and spacecraft launch vehicles.

8805.21.00. Air combat simulators and parts thereof.

8805.10.00 Aircraft launching gear and parts thereof; deckarrestor or similar gear and parts thereof.

8805.29.00 Other ground flying trainers and parts thereof.

9619.00.10 Sanitary towels (pads) and tampons.

1101.00.00 *deleted by Act No. 15 of 2017, s. 9(a)(iv).*

0402.99.10 Milk, specially prepared for infants.

0402.91.10 Milk, specially prepared for infants.

0402.29.10 Milk, specially prepared for infants.

0402.21.10 Milk, specially prepared for infants.

2106.90.20 *deleted by Act No. 7 of 2014, s. 2(a)(i).*

1102.20.00 *deleted by Act No. 15 of 2017, s. 9 (a)(iv).*

1006.30.00 Semi-milled or wholly milled rice, whether or not polished or glazed.

Ordinary bread.

Gluten bread.

Unleavened bread.

40. Made-up fishing nets of man-made textile material of tariff No. 5608.11.00.

41. Mosquito nets of tariff No. 6304.91.10.

42. *Deleted by Act No. 15 of 2017, s. 9(a)(iii).*

43. Materials, waste, residues and by-products, whether or not in the form of pellets, and preparations of a kind used in animal feeding of

tariff numbers 1213.00.00, 1214.10.00, 2308.00.00, 2309.10.00, 2309.90.10, 2309.90.90, 2302.10.00, 2302.30.00, 2303.20.00, 2303.30.00, 2304.00.00, 2306.10.00, 2306.20.00, 2306.30.00, 2306.41.00, 2306.49.00, 2306.50.00, 2306.60.00, 2306.90.00, 2835.25.00 and 2835.26.00.

44. Unprocessed green tea.

45. Specialized equipment for the development and generation of solar and wind energy, including deep cycle batteries which use or store solar power upon the recommendation of the Cabinet Secretary responsible for matters relating to energy.

46. Deleted by Act No. 14 of 2015, s. 5.

47. Tractors other than road tractors for semitrailers.

48. Inputs or raw materials supplied to solar equipment manufacturers for manufacture of solar equipment or deep cycle-sealed batteries which exclusively use or store solar power as approved from time to time by the Cabinet Secretary for the National Treasury, upon recommendation by the Cabinet Secretary responsible for energy and petroleum.

49. Aircraft parts of heading 8803, excluding parts of goods of heading 8801.

50. Goods of tariff No. 4011.30.00.

51. Taxable goods, imported or purchased for direct and exclusive use in the implementation of official aid funded projects upon approval by the Cabinet Secretary responsible for the National Treasury.

52. Plastic bag biogas digesters.

52A. Biogas.

52B. Leasing of biogas producing equipment.

53. Parts imported or purchased locally for the assembly of computer, subject to approval by the Cabinet Secretary for the National Treasury, on recommendation by the Cabinet Secretary responsible for matters relating to information technology.

54. Goods imported or purchased locally for use by the local film producers and local filming agents, upon recommendation by the Kenya Film Commission, subject to approval by the Cabinet Secretary to the National Treasury.

55. Taxable goods purchased or imported for direct and exclusive use in the construction and infrastructural works in industrial parks of one hundred acres or more including those outside special economic zones approved by the Cabinet Secretary for the National Treasury.

56. Inputs or raw materials locally purchased or imported by manufacturers of agricultural machinery and implements upon approval by the Cabinet Secretary responsible for industrialization.

57. All goods including material supplies, equipment, machinery and motor vehicles, for official use by the Kenya Defence Forces and the National Police Service.

58. Direction-finding compasses, instruments and appliances for aircraft.

59. Wheat seeds of tariff number 1001.11.00 and 1001.91.00.

60. Museum and natural history exhibits and specimens and scientific equipment for public museums.

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

62. Taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.

For the purposes of this paragraph, "recreational parks" means an area or a building where a person can voluntarily participate in a physical or mental activity for enjoyment, improvement of general health, well-being and the development of skills.

63. Taxable goods for the direct and exclusive use in the construction and equipping of specialized hospitals with a minimum bed capacity of fifty, approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary responsible for health who may issue guidelines for determining eligibility for the exemption.

64. Deleted by Act No. 10 of 2018, s. 19(a)(viii).

65. Taxable goods locally purchased or imported by manufacturers or importers of clean cooking stoves for direct and exclusive use in the assembly, manufacture or repair of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to energy.

66. Inputs or raw materials locally purchased or imported by manufacturers of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for energy. **"Clean cook stoves"** includes clean and energy saving cook stoves with tariff number 7321, as well as

their parts and raw materials that are either imported or sourced locally, provided that the stoves meet ISO/IWA 11:2012 standards of tier 2-4 for fuel efficiency, as determined by the Kenya Bureau of Standards.

67. Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbeques, braziers, gas-rings, plate warmers and similar nonelectric domestic appliances, and parts thereof, or iron or steel of tariff numbers 7321.11.00, 7321.12.00, 7321.19.00, 7321.81.00, 7321.82.00, 7321.83.00 and 7321.90.00.

68. Super absorbent polymer (SAP) of tariff number 39.06.90.0.

69. Carrier tissue white, 1 ply 14.5 GSM of tariff number 4703.21.00.

70. IP super soft fluff pulp — fr-fluff 310 treated pulp 488*125mm (cellose) of tariff number 4703.21.0.

71. Perforated PE film 15-22 gsm of tariff number 3921.190.0.

72. Spunbound non-woven 15-25 gsm of tariff number 56.03.1190.8.

[Act No. 38 of 2016, s. 30 (a)(vi).]

73. Airlid paper with super absorbent polymer 180gsm/67 of tariff number 48.03.00.0.

74. Airlid paper with super absorbent polymer 80gsm/67 of tariff number 48.03.00.0.

75. Airlid paper without super absorbent polymer 180gsm/67 of tariff number 48.03.00.0.

76. Airlid paper without super absorbent polymer 80gsm/67 of tariff number 48.03.00.0.

77. Pressure sensitive adhesive of tariff number 3506.91.90.

78. Plain polythene film/LPDE of tariff number 39.21.190.0.

79. Plain polythene film/PE of tariff number 39.21.190.0.

80. PE white 25-40gsm/release paper of tariff number 48.44.51.10.0.

81. ADL — 25-40gsm of tariff number 56.03.1190.8.

82. Elasticized side tape of tariff number 5402.4410.

83. 12-16 gsm spunbound piyropononwoven coverstock/12gsm spunbound PP non-woven SMS hydrophobic leg cuffs of tariff number 56.03.1190.8.

84. Polymetric elastic 2/3 strands of tariff number 3919.90.90.10.

85. Plain polythene film/PE of tariff number 39.20.10.10.

- 86.** PE white 25-40gsm/release paper of tariff number 48.10.99.00.
- 87.** 12-16 gsm spunbound piyropononwoven coverstock/15gsm spunbound PP non-woven SSMMS hydrophobic leg cuffs of tariff number 56.03.1190.
- 88.** Goods falling under tariff number 4907.00.90.
- 89.** Any other aircraft spare parts imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation.
- 90.** Inputs for the manufacture of pesticides upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to agriculture.
- 91.** Specially designed locally assembled motor vehicles for transportation of tourists, purchased before clearance through Customs by tour operators upon recommendation by the competent authority responsible for tourism promotion, provided the vehicles meet the following conditions—
- (i) the vehicles shall at all times be registered and operated by a company that is licenced under the Tourism Vehicle Regime;
 - (ii) the vehicles shall be used exclusively for the transportation of tourists;
 - (iii) the vehicles shall have provisions for camping, rescue and first aid equipment, luggage compartments and communication fittings; and (iv) any other condition the Commissioner may impose:
- Provided that tax shall become payable upon change of use or disposal of the vehicle for other use.
- 92.** Deleted by Act No. 10 of 2018, s. 19(a)(ix).
- 93.** Materials and equipment for the construction of grain storage, upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.
- 94.** The transfer of a business as a going concern by a registered person to another registered person.
- 95.** The supply of natural water, excluding bottled water, by a National Government, County Government, any political sub-division thereof or a person approved by the Cabinet Secretary for the time being responsible for water development, for domestic or for industrial use.
- 96.** Articles of apparel, clothing accessories and equipment specially designed for safety or protective purposes for use in registered hospitals and clinics or by county government or local authorities in firefighting.
- 97.** Taxable goods supplied to marine fisheries and fish processors upon

recommendation by the relevant state department.

[Act No. 9 of 2018, Sch.]

98. Deleted by Act No. 10 of 2018, s. 19(a)(xi).

99. Goods imported by passengers arriving from places outside Kenya, subject to the limitations and conditions specified as follows—

(a) the goods shall be —

(i) the property of and accompanying the passenger;

(ii) for the personal or household use of the passenger in Kenya; and

(iii) of such kinds and in such quantities as the proper officer may allow;

(b) notwithstanding subparagraph (c), the following goods shall not be exempt under this item—

(i) alcoholic beverages of all kinds, perfumed spirits and tobacco and manufactures thereof, except as provided in subparagraphs (f) and (g);

(ii) fabrics in the piece;

(iii) motor vehicles except, as provided in subparagraphs (c) and (d);
and

(iv) any trade goods, or goods for supply or disposal to other

persons;

(c) subject to subparagraphs (a) and (b), the following goods may be exempted under this item when imported as baggage by a person on first arrival or by a returning resident of Kenya whom the proper officer is satisfied is *bona fide* changing residence from a place outside Kenya to a place within Kenya—

(i) wearing apparel;

(ii) personal and household effects of any kind which were in his personal or household use in his former place of residence; and

(iii) one motor vehicle, (excluding buses and minibuses of a seating capacity of more than 13 passengers and load-carrying vehicles of a load carrying capacity exceeding two tones) which the passenger has personally owned and used outside Kenya for at least twelve months (excluding the period of the voyage in the case of shipment):
Provided—

(i) the person has attained the age of eighteen years; and

- (ii) where the person has previously been granted exemption under this paragraph, any subsequent exemption shall not apply unless such person has used the motor vehicle so imported into Kenya for a period of not less than four years, and tax has been paid for the motor vehicle upon which exemption had previously been granted; (iii) where the returning resident has owned and used a left-hand drive vehicle for at least twelve months the person may sell the vehicle and import a right hand drive vehicle of whose current retail selling price does not exceed that of the previously owned left-hand-drive vehicle, subject to the following conditions —
- (A) the person shall provide proof of ownership and use of the previously owned left-hand-drive vehicle in the country of former residence for a period of at least one year prior to the return;
- (B) the person shall provide proof of disposal of the previously owned left-hand-drive vehicle before changing residence; and
- (iv) subparagraph (iii) shall only apply to residents returning from countries that operate Left Hand Drive motor vehicles;
- (d) subject to subparagraphs (a) and (b) the following goods may be exempted under this item when imported as baggage by a person

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39 whom the proper officer is satisfied is making a temporary visit not exceeding three months to Kenya—

- (i) non-consumable goods imported for his personal use during his visit which he intends to take out with him when he leaves at the end of his visit;
- (ii) consumable provisions and non-alcoholic beverages, in such quantities and of such kinds as are, in the opinion of the proper officer, consistent with his visit; and
- (iii) goods imported by a returning resident, being an employee of an international organization the headquarters of which are in Kenya, and who has been recalled for consultations at the organization's headquarters;
- (e) subject to subparagraphs (a) and (b), the following goods may be exempted under this item imported as baggage by a person who the proper officer is satisfied is a resident of Kenya returning from a visit outside

Kenya and who is not changing residence in accordance with subparagraphs (c) and (d)—

- (i) wearing apparel;
 - (ii) personal and household effects which have been in his personal or household use.
- (f) subject to subparagraph (a) and (b), tax shall not be levied on the following goods imported by, and in the possession of a passenger—
- (i) spirits (including liquors) or wine, not exceeding one litre or wine not exceeding two litres;
 - (ii) perfume and toilet water not exceeding in all one half litre, of which not more than a quarter may be perfume; and
 - (iii) cigarettes, cigars, cheroots, cigarillos, tobacco and snuff not exceeding in all 250 grams in weight: Provided that the tax free allowance under this subparagraph shall be granted only to passengers who have attained the age of eighteen years;
- (g) subject to subparagraphs (a) and (b)—
- (i) the exemption granted in accordance with subparagraphs (c), (d) and (e) may be allowed in respect of baggage imported within ninety days of the date, of arrival of the passenger or such further period, not exceeding three hundred and sixty days from such arrival, as the Commissioner may allow; and
 - (ii) the tax free allowances granted in accordance with subparagraph (f) shall not be allowed in respect of goods specified in the paragraph imported in unaccompanied baggage;
- (h) where any person who has been granted exemption under subparagraphs (c) or (d) changes his residence to a place outside Kenya within ninety days from the date of his arrival, he shall export his personal or household effects within thirty days, or such further period, not exceeding sixty days from the date he changes such residence

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40 to a place outside Kenya, as the Commissioner may allow, otherwise tax shall become due and payable from the date of importation; and

- (i) subject to paragraphs (1) and (2), goods up to the value of three hundred United States Dollars for each traveler in respect of goods, other than goods referred to in paragraph (9), shall be exempted when imported

by the traveler in his or her accompanied baggage, or upon his or her person and declared by him or her to an officer, provided that the person has been outside Kenya for a period in excess of twenty four hours.

[Act No. 9 of 2018, Sch.]

100. Taxable goods for emergency relief purposes for use in specific areas and within a specified period, supplied to or imported by the Government or its approved agent, a non-governmental organization or a relief agency authorized by the Cabinet Secretary responsible for disaster management, where—

- (a) the goods are for use in areas where a natural disaster or calamity has occurred in Kenya; or
- (b) the goods are intended for use in officially recognized refugee camps in Kenya;
- (c) the goods are household utensils, food stuffs, materials for provision of shelter or equipment and materials for health, sanitary or educational purposes; and
- (d) the case of a natural disaster or calamity, the importation or purchase locally is made within six months or such further period, not exceeding twelve months, as the Commissioner may permit in each case.

[Act No. 9 of 2018, Sch.]

101. Alcoholic or non-alcoholic beverages supplied to the Kenya Defense Forces Canteen Organization.

[Act No. 10 of 2018, s. 19(a)(xii).]

102. Goods imported or purchased locally for direct and exclusive use in the implementation of projects under a special operating framework arrangements with the Government.

[Act No. 10 of 2018, s. 19(a)(xii).]

103. Hearing aids, excluding parts and accessories, of tariff No. 9021.40.00.

[Act No. 10 of 2018, s. 19(a)(xii).]

104. One personal motor vehicle, excluding buses and minibuses of seating capacity of more than eight seats, imported by a public officer returning from a posting in a Kenyan mission abroad and another motor vehicle by his spouse and which is not exempted from Value Added Tax under the First Schedule: Provided that the exemption under this item shall not apply—

- (a) unless the officer is returning to Kenya from a posting in a Kenyan mission abroad upon recall;
- (b) unless, in the case of an officer's spouse, the spouse accompanied the officer in the foreign mission and is returning with the officer;
- (c) if the officer or the spouse has either enjoyed a similar privilege within the previous four years from the date of importation or has imported

a motor vehicle free of duty under item 6 of Part A of this Schedule;

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41 (d) unless the vehicle is imported within ninety days of the date of arrival of the officer or spouse or such longer period, not exceeding three hundred and sixty days from such arrival as the Commissioner may allow; and (e) to a State officer.

[Act No. 10 of 2018, s. 19(a)(xii).]

105. Locally manufactured motherboards.

[Act No. 23 of 2019, s. 21.]

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

[Act No. 23 of 2019, s. 21.]

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

[Act No. 23 of 2019, s. 21.]

108. 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.

[Act No. 23 of 2019, s. 21.]

109. Goods imported or purchased locally for the direct and exclusive use in the construction of houses under an affordable housing scheme approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to housing.

[Act No. 23 of 2019, s. 21.]

110. Musical instruments and other musical equipment, imported or purchased locally, for exclusive use by educational institutions, upon recommendation by the Cabinet Secretary responsible for Education.

[Act No. 23 of 2019, s. 21.]

SECTION B - EXEMPT GOODS ON TRANSITION

(1) The following goods shall be exempt supplies for a period of three years from the commencement of this Act unless the exempt status of the supplies is earlier revoked—

2709.00.00 Petroleum oils and oils obtained from bituminous minerals, crude.

2710.12.10 Motor spirit (gasoline) regular.

2710.12.20 Motor spirit (gasoline), premium.

2710.12.30 Aviation spirit.

2710.12.40 Spirit type jet fuel.

2710.12.50 Special boiling point spirit and white spirit.

2710.12.90 Other light oils and preparations.

2710.19.10 Partly refined (including topped crudes).

2710.19.21 Kerosene type jet fuel.

2710.19.22 Illuminating kerosene (IK).

2710.19.29 Other medium petroleum oils and preparations.

2710.19.31 Gas oil (automotive, light, amber, for high speed engines).

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2710.19.39 Other gas oils.

2711.21.00 Natural gas in gaseous state.

2711.29.00 Other natural gas in gaseous state.

(2) Notwithstanding paragraph (1), the exemption shall be extended by a further two years from 1st September, 2016.

[Act No. 38 of 2016, s. 30 (c)(ii).]

Part II of the First Schedule which it is proposed to amend

PART II – SERVICES

The supply of the following services shall be exempt supplies—

1. The following financial services—

- (a) the operation of current, deposit or savings accounts, including the provision of account statements;
- (b) the issue, transfer, receipt or any other dealing with money, including money transfer services, and accepting over the counter payments of household bills, but excluding the services of carriage of cash, restocking of cash machines, sorting or counting of money;
- (c) issuing of credit and debit cards;
- (d) automated teller machine transactions, excluding the supply of automated teller machines and the software to run it;
- (e) telegraphic money transfer services;
- (f) foreign exchange transactions, including the supply of foreign drafts and international money orders;
- (g) cheque handling, processing, clearing and settlement, including special clearance or cancellation of cheques;
- (h) the making of any advances or the granting of any credit;
- (i) issuance of securities for money, including bills of exchange, promissory notes, money and postal orders;
- (j) the provision of guarantees, letters of credit and acceptance and other forms of documentary credit;
- (k) the issue, transfer, receipt or any other dealing with bonds, *Sukuk*, debentures, treasury bills, shares and stocks and other forms of security or secondary security;
- (l) the assignment of a debt for consideration;
- (m) The provision of the above financial services on behalf of another on a commission basis.
- (n) *Deleted by Act No. 10 of 2018, s. 19(b)(i).*
- (o) any services set out in items (a) to (n) that are structured in conformity with Islamic finance.

2. Insurance and reinsurance services excluding the following—

- (a) management and related insurance consultancy services.
- (b) actuarial services; and

(c) services of insurance assessors and loss adjusters.

3. The supply of education services

For the purposes of this paragraph, education services means education provided by—

- (a) a pre-primary, primary, or secondary school;
- (b) a technical college or university;
- (c) an institution established for the promotion of adult education, vocational training or, technical education but shall not apply in respect of business or user training and other consultancy services designed to improve work practices and efficiency of an organization.

4. Medical, veterinary, dental and nursing services.

5. Agricultural, animal husbandry and horticultural services.

6. Burial and cremation services.

7. Transportation of passengers by any means of conveyance excluding international air transport or where the means of conveyance is hired or chartered.

8. Supply by way of sale, renting, leasing, hiring, letting of land or residential premises;

“residential premises” means land or a building occupied or capable

of being occupied as a residence, but not including hotel or holiday accommodation; Provided that this paragraph shall not apply where such services are supplied in respect of—

- (a) car park services; or
- (b) conference or exhibition services, except where such services are provided for educational institutions as part of learning.

9. Community, social and welfare services provided by National Government, County Government or any political sub-division thereof.

10. Insurance agency, insurance brokerage, securities brokerage services and tea and coffee brokerage services.

[Act No. 23 of 2019, s. 21.]

11. The supply of—

- (a) services rendered by educational, political, religious, welfare and other philanthropic associations to their members, or

- (b) social welfare services provided by charitable organizations registered as such, or which are exempted from registration, by the Registrar of Societies under section 10 of the Societies Act.

(Cap. 108), or by the Non- Governmental Organizations Co-ordination Board under section 10 of the Non-Governmental Organization Coordination

Act, (No. 19 of 1990) and whose income is exempt from tax under paragraph 10 of the First Schedule to the Income Tax Act.

(Cap. 470), and approved by the Commissioner of Social Services:

Paragraph 1 of Part I of the First Schedule to No. 23 of 2015 which it is proposed to amend— are rendered by way of business.

12. The following entertainment services—

- (a) stage plays and performances which are conducted by educational institutions, approved by the Cabinet Secretary for the time being responsible for education as part of learning;
- (b) sports, games or cultural performances conducted under the auspices of the Ministry for the time being responsible for culture and social services.

13. Accommodation and restaurant services provided within the following premises by the proprietors thereof—

- (a) establishments operated by an educational training institutions approved by the Cabinet Secretary for the time being responsible for education for the use of the staff and students by that institution; or
- (b) establishments operated by a medical institution approved by the Cabinet Secretary for the time being responsible for health for the use by the staff and patients of such institutions; or
- (c) canteens and cafeterias operated by an employer for the benefit of his employees.

14. Conference services conducted for educational institutions as part of learning where such institutions are approved by the Ministry for the time being responsible for Education.

15. Car park services provided by National Government, County Government, any political subdivision therefore by an employer to his employees on the premises of the employer.

16. The supply of airtime by any person other than by a provider of cellular mobile telephone services or wireless telephone services.

17. Betting, gaming and lotteries services.

18. Hiring, leasing and chartering of aircrafts.

1 8A. Transportation of sugarcane from farms to milling factories.

19. Deleted by Act No. 14 of 2015, s. 5 (c)(i).

20. Taxable services for direct and exclusive use in the implementation of official aid funded projects upon approval by the Cabinet Secretary to the National Treasury.

21. Services imported or procured locally for use by the local film producers or local film agents upon recommendation by the Kenya Film Commission, subject to approval by the Cabinet Secretary for the National Treasury.

22. Taxable services provided for direct and exclusive use in the construction and infrastructural works in industrial parks of one hundred acres or more including those outside special economic zones approved by the Cabinet Secretary for the National Treasury.

23. Supply of sewerage' services by the national government, a county government, any political subdivision thereof or a person approved by the Cabinet Secretary for the time being responsible for water development.

24. Entry fees into the national parks and national reserves.

25. The services of tour operators, excluding in-house supplies.

26. Taxable services for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more, convention and conference facilities upon the recommendation by the Cabinet Secretary responsible for matters relating to recreational parks.

27. Taxable services for direct and exclusive use for the construction of specialized hospitals with accommodation facilities upon recommendation by the Cabinet Secretary responsible for health, who shall issue guidelines for the criteria to determine the eligibility for the exemption.

28. Taxable services, procured locally or imported for the construction of liquefied petroleum gas storage facilities with a minimum capital investment of four billion shillings and a minimum storage capacity of fifteen thousand metric tonnes as approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for liquefied petroleum gas.

29. Postal services provided through the supply of postage stamps, including rental of post boxes or mail bags and any subsidiary services thereto.

30. Asset transfers and other transactions related to the transfer of assets into real estates investment trusts and asset backed securities.

31. Services imported or purchased locally for direct and exclusive use in the implementation of projects under special operating framework arrangements with the Government.

Second schedule to No. 35 of 2013 which it is proposed to amend-

SECOND SCHEDULE

ZERO-RATING

PART A – ZERO RATED SUPPLIES

Where the following supplies, excluding hotel accommodation, restaurant or entertainment services where applicable, take place in the course of a registered person's business, they shall be zero rated in accordance with the provisions of section 7—

- 1.** The exportation of goods or taxable services.
- 2.** The supply of goods or taxable services to an export processing zone business as specified in the Export Processing Zones Act (Cap. 517), as being eligible for duty and tax free importation.
- 3.** Shipstores supplied to international sea or air carriers on international voyage or flight.
- 4.** The supply of coffee and tea for export to coffee or tea auction centers.
- 5.** Transportation of passengers by air carriers on international flight.
- 6.** The supply of taxable services to international sea or air carriers on international voyage or flight.
- 7.** Deleted by Act No. 9 of 2018, Sch.
- 8.** Deleted by Act No. 9 of 2018, Sch.
- 9.** Goods purchased from duty free shops by passengers departing to places outside Kenya.

[Act No. 14 of 2015, s. 6 (a).]

- 10.** Supply of taxable services in respect of goods in transit.
- 11.** Inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, as approved from time to time by the Cabinet Secretary in consultation with the Cabinet Secretary responsible for matters relating to health.
- 12.** The supply of goods or taxable services to a special economic zone enterprise.
- 13.** The supply of liquefied petroleum gas including propane.

13A. The supply of ordinary bread.

13B. Deleted by Act No. 23 of 2019, s. 22.

14. Deleted by Act No. 9 of 2018, Sch.

15. Milk and cream, not concentrated nor containing added sugar or other sweetening matter, of tariff numbers—

0401.10.00—of a fat content, by weight, not exceeding 1%;

0401.20.00—of a fat content, by weight, exceeding 1% but not exceeding 6%;

0401.40.00—of a fat content, by weight, exceeding 6% but not exceeding 10%;

0401.50.00—of a fat content, by weight, exceeding 10%.

16. All inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products upon recommendation by the Cabinet Secretary for the time being responsible for agriculture.

17. Deleted by Act No. 9 of 2018, Sch.

18. Inputs or raw materials 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.

19. Agricultural pest control products.

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

Section 83(1) of No. 29 of 2015 which it is proposed to amend—

83. Late submission penalty

(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;

Section 7(2A) of No. 29 of 2016 which it is proposed to amend—

(2A) Without prejudice to the provisions of subsection (2), the fee at a rate of one point five per cent shall be charged on the custom value of —

- (a) raw materials and intermediate products imported by approved manufacturers;

Paragraph (xv) Part A of the Second Schedule to No. 29 of 2016 which it is proposed to amend—

- (xv) aircraft;

Paragraph (xxii) Part A of the Second Schedule to No. 29 of 2016 which it is proposed to amend—

- (xxii) any other goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than two hundred million shillings;

Paragraph (vi) Part B of the Second Schedule to No. 29 of 2016 which it is proposed to amend—

- (vi) any other goods as the Cabinet Secretary may determine are in public interest, or to promote investments which value shall not be less than two hundred million shillings;