

SPECIAL ISSUE

Kenya Gazette Supplement No. 66 (National Assembly Bills No. 10)



REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2020

NAIROBI, 5th May, 2020

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REPUBLIC OF KENYA

KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2020

NAIROBI, 21st MAY, 2020

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Bill for the introduction of the National Assembly

Bill for the introduction of the National Assembly

THE FINANCE BILL, 2020

A Bill for

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

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Finance Act, 2020 and shall come into operation as follows—

Short title and commencement.

(a) sections 2, 3, 4, 5, 6, 7, 8, 9, 15 and 16, the 1st January, 2021; and

(b) all other sections, on the date of assent.

PART II—INCOME TAX ACT

2. Section 6A of the Income Tax Act is amended in subsection (1) by deleting the word “ten” and substituting therefor the word “fifteen”.

Amendment of section 6A of Cap. 470.

3. Section 12 of the Income Tax Act is amended in subsection (1) by deleting paragraph (a) and substituting therefor the following new paragraph—

Amendment of section 12 of Cap. 470.

(a) if the minimum tax payable under section 12D is higher than the instalment tax under this section; and

4. The Income Tax Act is amended by inserting the following new sections immediately after section 12C—

Insertion of new sections 12D and 12E in Cap. 470.

Minimum tax.

12D. (1) Notwithstanding any other provision of this Act, a tax to be known as minimum tax shall be payable by a person if—

- (a) that person's income is not exempt under this Act;
- (b) that person's income is not chargeable to tax under sections 5, 6A, 12C, the Eighth or the Ninth Schedules; or
- (c) the instalment tax payable by that person under section 12 is higher than the minimum tax.

(2) The tax payable under this section shall be paid in instalments which shall be due on the twentieth day of each period ending on the fourth, sixth, ninth and twelfth month of the year of income.

Digital service tax.

12E. (1) Notwithstanding any other provision of this Act, a tax to be known as digital service tax shall be payable by a person whose income from the provision of services is derived from or accrues in Kenya through a digital market place:

Provided that a resident person or a non-resident person with a permanent establishment in Kenya shall offset the digital service tax paid against the tax payable for that year of income.

(2) The tax payable under subsection (1) shall be due at the time of the transfer of the payment for the service to the service provider.

5. Section 15 of the Income Tax Act is amended in subsection (2) by—

Amendment of section 15 of Cap. 470.

- (a) deleting paragraph (h);
- (b) deleting paragraph (s);
- (c) deleting paragraph (ss);
- (d) deleting paragraph (u);
- (e) deleting paragraph (v); and
- (f) deleting paragraph (x).

6. The Income Tax Act is amended by repealing section 22C.

Repeal of section 22C of Cap. 470.

7. Section 34 of the Income Tax Act is amended in subsection (1) by inserting the following new paragraphs immediately after paragraph (m)—

Amendment of section 34 of Cap. 470.

- (n) tax upon the gross turnover of a person whose income is chargeable to tax under section 12D shall be charged at the rate specified in the Third Schedule.

- (o) tax upon the gross transaction value of services chargeable to tax under section 12E shall be charged at the rate specified in the Third Schedule.

8. Part I of the First Schedule to the Income Tax Act is amended by—

Amendment of the First Schedule to Cap. 470.

- (a) deleting paragraph 44;
- (b) deleting paragraph 45;
- (c) deleting paragraph 53.

9. The Third Schedule to the Income Tax Act is amended in Head B by inserting the following new paragraphs immediately after paragraph 10—

Amendment of Third Schedule to Cap. 470.

- 11. The rate of tax in respect of minimum tax under section 12D shall be one per cent of the gross turnover.
- 12. The rate of tax in respect of digital service tax under section 12E shall be one point five per cent of the gross transaction value.

PART III—VALUE ADDED TAX ACT

10. (1) Section 17 of the Value Added Tax Act, 2013, is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of section 17 of No. 35 of 2013.

(2) If, at the time when a deduction for input tax would otherwise be allowable under subsection (1)—

- (a) the person does not hold the documentation referred to in subsection (3), or
- (b) the registered supplier has not declared the sales invoice in a return,

the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation:

Provided that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred.

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

Amendment of First Schedule to No. 35 of 2013.

(a) in Section A of Part I by—

- (i) deleting tariff numbers 8802.11.00, 8802.12.00, 8802.20.00, 8803.30.00, 8805.10.00, 8805.21.00 and 8805.29.00 and their respective descriptions appearing immediately after paragraph 39;
- (ii) deleting paragraph 45;
- (iii) deleting paragraph 47;
- (iv) deleting paragraph 50;
- (v) deleting paragraph 65;
- (vi) deleting paragraph 67;
- (vii) deleting paragraph 104;
- (viii) deleting paragraph 107;

(b) in Section A of Part I, by inserting the following new paragraph immediately after paragraph 110—

111. Maize (corn) seeds of tariff no. 1005.10.00.

(c) in Part II, by inserting the word “ambulance” immediately after the word “dental” appearing in paragraph 4.

(d) in Part II, by inserting the words “excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00” at the end of paragraph 18.

12. The Second Schedule to the Value Added Tax Act, 2013, is amended in Part A by—

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

(a) deleting paragraph 13;

(b) deleting paragraph 18.

PART IV—EXCISE DUTY ACT

13. Section 2 of the Excise Duty Act, 2015, is amended by deleting the definition of “licence” and substituting therefor the following new definition—

Amendment of
section 2 of No.
23 of 2015.

“licence”—

- (a) in the case of excisable services, means the certificate of registration;

(b) in the case of excisable goods, means the licence issued under section 17; or

(c) in the case of any activity under section 15 (1) (e), means the licence required thereunder.

14. The First Schedule to the Excise Duty Act, 2015, is amended in paragraph 1 of Part I by—

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

(a) deleting the expression “10%” appearing in the description “Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10%” and substituting therefor the expression “8%”;

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

PART V—TAX PROCEDURES ACT

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

Insertion of a new section 37D in No. 29 of 2015.

Voluntary Tax Disclosure Programme.

37D. (1) There is established a programme to be known as the Voluntary Tax Disclosure Programme which shall be for a period of three years with effect from the 1st January, 2021.

(2) For purpose of this section, “voluntary tax disclosure programme” means a programme where a person discloses the person’s tax liabilities to the Commissioner for the purpose of being granted relief of penalties and interest on the tax disclosed.

(3) A person with a tax liability may apply to the Commissioner for relief in the prescribed form with respect to tax liabilities that accrued within a period of five years prior to the 1st July, 2020.

(4) A person granted relief under this section—

(a) shall not be prosecuted with respect to the tax liability disclosed under this section; and

(b) shall be granted a remission of the interest and penalty due on the tax liability as follows—

(i) where the disclosure is made and tax liability paid in the first year of the programme, a full remission of the interest and penalty;

(ii) where the disclosure is made and tax liability paid in the second year of the programme, remission of fifty per cent of the interest and penalty; and

(iii) where the disclosure is made and tax liability paid in the final year of the programme, remission of twenty-five per cent of the interest and penalty.

(5) An application under subsection (3) shall be voluntary and disclose all material facts.

(6) Where the Commissioner is satisfied with the facts disclosed in the application under subsection (3), the Commissioner shall grant the relief applied for:

Provided that the relief shall not result in the payment of a refund to the person.

(7) Where the Commissioner grants relief under subsection (6), the Commissioner shall enter into an agreement with the person setting out the terms of payment of the tax liability and the period within which the payment shall be made

which shall not exceed one year from the date of the agreement.

(8) Where a person fails to meet the terms of the agreement under subsection (7), that person shall be liable to pay the full interest and penalty that had been remitted under the agreement.

(9) A person granted relief under this section shall not seek any other remedy including the right to appeal with respect to the taxes, penalties and interest remitted by the Commissioner.

(10) Where, before the expiry of the agreement between the Commissioner and the person, the Commissioner establishes that the person failed to disclose a material fact in respect of the relief granted under this section, the Commissioner may —

- (a) withdraw any relief granted;
- (b) assess and collect any balance of the tax liability; or
- (c) commence prosecution under section 80.

(11) A person aggrieved by a decision of the Commissioner under subsection (10) may appeal against the decision.

(12) This section shall not apply to a person if the person —

- (a) is under audit, investigation or is a party to ongoing litigation in respect of the tax liability or any matter relating to the tax liability; or
- (b) has been notified of a pending audit or investigation by the Commissioner.

(13) The disclosure of a tax liability under this section shall be confidential.

16. The Tax Procedures Act, 2015, is amended by inserting the following new section immediately after section 42A—

Insertion of a new section 42B in No. 29 of 2015.

Appointment of digital service tax agent.

42B. (1) The Commissioner may appoint an agent for the purpose of collection and remittance of digital service tax to the Commissioner.

(2) An appointment under subsection (1) may be revoked at any time by the Commissioner.

PART VI—MISCELLANEOUS FEES AND LEVIES ACT

17. Section 7 of the Miscellaneous Fees and Levies Act, 2016, is amended in subsection (3) by deleting paragraph (b) and substituting therefor the following new paragraph—

Amendment of section 7 of No. 29 of 2016.

(b) goods imported under the East African Community Duty Remission Scheme shall be charged import declaration fee at a rate of one point five per cent of the customs value.

18. The Miscellaneous Fees and Levies Act, 2016, is amended by inserting the following new section immediately after section 9—

Insertion of a new section 9A in No. 29 of 2016.

Duty on goods for home use from an export processing zone enterprise.

9A. Notwithstanding the import duties payable under section 110 of the East African Community Customs Management Act, 2004, an additional duty at a rate of two point five per cent of the customs value shall be payable in respect of goods entered for home use from an export processing zones enterprise.

19. The Second Schedule to the Miscellaneous Fees and Levies Act, 2016, is amended—

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

(a) in Part A by—

(i) deleting paragraph (xv) and substituting 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.
- (ii) deleting paragraph (xxii);
- (iii) deleting paragraph (xxiii);
- (iv) by inserting the following new paragraph immediately after paragraph (xxiv)—
 - (xxv) all goods, including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.
- (b) in Part B—
 - (i) deleting paragraph (vi);
 - (ii) by inserting the following new paragraphs immediately after paragraph (vii)—
 - (viii) currency notes and coins imported by the Central Bank of Kenya.
 - (ix) all goods, including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.

PART VII—TAX APPEALS TRIBUNAL

20. Section 13 of the Tax Appeals Tribunal Act, 2013, is amended in subsection (6) by inserting the words “or documents” immediately after the word “appeal”.

Amendment of
section 13 of No.
40 of 2013.

PART VIII—MISCELLANEOUS

21. Section 2 of the Public Roads Toll Act is amended—

Amendment of
section 2 of Cap.
407.

- (a) in the definition of the expression “toll collector” by inserting the words “private or public” immediately before the word “toll”;
- (b) by inserting the following new definitions in proper alphabetical sequence—

“base toll rate” means the unit rate prescribed by the Minister under section 4A for the calculation of applicable tolls;

“Fund” means the National Roads Toll Fund established under section 6A;

“Minister” means the Cabinet Secretary for the time being responsible for matters relating to roads.

22. Section 3 of the Public Roads Toll Act is amended—

Amendment of section 3 of Cap. 407.

(a) by deleting subsection (2) and substituting therefor the following new subsection—

(2) The stations specified in the first column of the First Schedule are declared to be transit toll stations for the public roads respectively set out in the second column.

(b) by deleting subsection (5) and substituting therefor the following new subsection—

(5) The toll in respect of every vehicle approaching and proceeding through a toll station shall be paid to the toll collector in such manner as may be prescribed by the Minister.

23. Section 4A of the Public Roads Toll Act is amended—

Amendment of section 4A of Cap. 407.

(a) by deleting subsection (3);

(b) by deleting subsection (4);

(c) by deleting subsection (5).

24. Section 4B of the Public Roads Toll Act is amended—

Amendment of section 4B of Cap. 407.

(a) by inserting the following proviso immediately after subsection (1)—

Provided that the agreement may prescribe alternative arrangements for the levying, collection and administration of tolls and management of toll infrastructure.

(b) by inserting the following proviso immediately after subsection (2)—

Provided that the Minister may prescribe the base toll rate in the agreement and permit the person referred to in subsection (1) to adjust, vary or otherwise revise the toll in accordance with an adjustment mechanism provided in the agreement.

25. The Public Roads Toll Act is amended by inserting the following new section immediately after section 6—

Insertion of new section on Cap. 407.

Establishment of Fund.

No.18 of 2012.

6A. (1) The Minister responsible for the National Treasury shall establish a Fund to be known as the National Roads Toll Fund under the Public Finance Management Act, 2012.

(2) All tolls collected by the persons appointed under section 4 shall be remitted to the Fund.

(3) The Fund shall be administered in accordance with section 24 of the Public Finance Management Act, 2012, and the regulations made thereunder.

26. Section 8 of the Public Roads Toll Act is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 8 of Cap. 407.

(3) Notwithstanding subsections (1) and (2), the person with whom the Minister enters into an agreement under section 4A may collect the unpaid tolls from defaulters as a civil debt recoverable summarily.

27. Section 11 of the Capital Markets Act is amended in subsection (3) by inserting the following new paragraph immediately after paragraph (g)—

Amendment of section 11 of Cap. 485A.

(ga) license, approve and regulate private equity and venture capital companies that have access to public funds.

28. Section 18 of the Capital Markets Act is amended in subsection (1) by deleting the words “and paying beneficiaries from collected unclaimed dividends when they resurface”.

Amendment of section 18 of Cap. 485A.

29. Section 204A of the Insurance Act is amended in subsection (3) by inserting the expression “within thirty days” immediately after the word “may”.

Amendment of section 204A of Cap. 487

30. Section 2 of the Standards Act is amended by deleting the definition of the word “consolidator” and substituting therefor the following new definition—

Amendment of section 2 of Cap. 496.

“consolidator” means a firm that is licensed to consolidate goods belonging to different consignees at the country of export, which shall be under one Master Bill of Lading or Master Airway Bill, and breaks the consignment into smaller consignments at the port of destination for the different consignees for the purpose of individual customs declaration.

31. Section 7 of the Road Maintenance Levy Fund Act, 1993, is amended—

Amendment of section 7 of No. 9 of 1993.

- (a) by deleting the words “and transit tolls levied under the Public Roads Toll Act” appearing in subsection (2); and
- (b) by deleting the words “and transit tolls” appearing in subsection (3).

32. Section 5 of the Kenya Revenue Authority Act, 1995, is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 5 of No. 2 of 1995.

(2A) The Authority may establish an institution to provide capacity building and training for the better carrying out of its functions.

33. Section 16 of the Kenya Revenue Authority Act, 1995, is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (b)—

Amendment of section 16 of No. 2 of 1995.

(ba) any commission received by the Authority for collecting any revenue on behalf of a county government or government agency:

Provided that such commission shall not exceed two per cent of the total revenue collected on behalf of the county government or government agency.

34. The Kenya Revenue Authority Act, 1995, is amended by inserting the following new section immediately after section 20—

Insertion of a new section 20A in No. 2 of 1995.

Limitation of actions.

20A. Legal action against the Authority
shall not be instituted unless—

- (a) it is commenced within twelve months after the act, neglect or default complained of;
- (b) in the case of continuing injury or damage, within six months after the cessation of the act; and
- (c) at least one month written notice specifying the particulars of the claim and intention to commence the action or legal proceeding has been served upon the Commissioner-General.

35. Section 21 of the Kenya Revenue Authority Act, 1995, is amended by inserting the following new paragraph immediately after paragraph (e)—

Amendment of
section 21 of No.
2 of 1995.

(f) with respect to capacity building and training.

36. Section 35 of the Retirement Benefits Act, 1997, is amended by renumbering the existing provision as subsection (1) and inserting the following new subsections

Amendment of
section 35 of No.
3 of 1997.

(2) A trustee who fails to submit a copy of the actuarial report to the Chief Executive Officer by the due date specified in the regulations shall pay a penalty of one hundred thousand shillings.

(3) Where the report remains unsubmitted, the trustee, in addition to the penalty specified under subsection (2), shall pay a further penalty of one thousand shillings for each day or part thereof during which the report remains unsubmitted.

37. The Second Schedule to the Insolvency Act, 2015, is amended in paragraph 3 (1) by inserting the following new item immediately after item (g)—

Amendment of
Second Schedule
to No. 18 of 2015.

- (h) all amounts that are held on behalf of the Kenya Revenue Authority by a person registered under the Banking Act who has been appointed as an agent for revenue banking services by the Commissioner at the point of receivership or liquidation of the bank or institution.

MEMORANDUM OF OBJECTS AND REASONS

This Bill has been submitted by the Cabinet Secretary for the National Treasury and Planning and formulates the proposals announced in the Budget for 2020/2021 relating to liability to, and collection of taxes, and for matters incidental thereto.

The Bill also seeks to amend the following laws—

The Roads Tolls Act (Cap. 407)

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

The Capital Markets Act (Cap. 485A)

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

The Insurance Act (Cap. 487)

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

The Standards Act (Cap. 496)

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

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

The Bill seeks to amend the Act to provide for a legal framework for the establishment of an institution to offer capacity building and training on tax, customs and revenue administration. The Bill further proposes to amend the Act to include commissions earned by the Kenya Revenue Authority on collections made on behalf of government agencies or county governments as a source of funding for the Authority capped at 2% of the

revenue collected. The Bill also seeks to amend the Act by providing for specific timelines within which the Authority can be sued to enable the Authority to effectively manage its disputes.

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

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

The Insolvency Act (No. 18 of 2015)

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

Dated the 4th May, 2020

JOSEPH K. LIMO,
*Chairperson of the Departmental Committee
on Finance and National Planning.*

Section 6A of Cap. 470 which it is intended to amend—

6A. Imposition of residential rental Income Tax

(1) Notwithstanding any other provision of this Act, a tax to be known as residential rental income tax shall be payable with effect from the 1st January, 2016 by any resident person from income which is accrued in or derived from Kenya for the use or occupation of residential property, and which is in excess of one hundred and forty-four thousand shillings but does not exceed ten million shillings during any year of income

Provided that this section shall not apply where a person who would otherwise pay tax under this section, by notice in writing addressed to the Commissioner, elects not to be subject to residential rental income tax, in which case the other provisions of this Act shall apply to such a person.

(2) The Minister may, by notice in the Gazette, prescribe regulations for the better carrying out the provisions of this section.

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

12. Imposition of instalment tax

(1) Notwithstanding any other provisions of this Act, a tax to be known as instalment tax shall be payable for the year of income commencing on or after the 1st January, 1990 by every person chargeable to tax or any person who has paid provisional tax in any year of income in accordance with the provisions of this section, but a taxpayer shall not be required to pay the instalment tax—

- (a) if to the best of his judgment and belief he will have no income chargeable to tax for that year of income other than emoluments; and
- (b) if he has reasonable ground to believe that the whole of the tax payable by him in respect of those emoluments will be recovered under section 37.

(2) The amount of instalment tax payable by any person for any current year of income shall be the lesser of—

- (a) the amount equal to the tax that would be payable by that person if his total income for the current year was an amount equal to his instalment income; or
- (b) the amount specified in the preceding year assessment multiplied by one hundred and ten per cent.

(3) The amount of tax determined under either subsection (2)(a) or (b) shall be reduced by the aggregate of the tax that has been or will be

paid in the current year by way of deduction under section 12A, 17A, 35 or 37 except that the deductions under section 17A shall not apply to individuals.

(4) The amount of instalment tax required to be paid for any year of income shall be the annual amount calculated in accordance with subsections (2) and (3) but subject to the proportions as specified in the Twelfth Schedule.

(5) No instalment tax shall be payable by an individual in any year of income where the total tax payable for that year of income is an amount not exceeding forty thousand shillings.

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

15. Deductions allowed

(1) For the purpose of ascertaining the total income of any person for a year of income there shall, subject to section 16 of this Act, be deducted all expenditure incurred in such year of income which is expenditure wholly and exclusively incurred by him in the production of that income, and where under section 27 of this Act any income of an accounting period ending on some day other than the last day of such year of income is, for the purpose of ascertaining total income for any year of income, taken to be income for any year of income, then such expenditure incurred during such period shall be treated as having been incurred during such year of income.

(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.

(3) Without prejudice to subsection (1), in ascertaining the total income of a person for a year of income the following amounts shall be deducted:

- (a) the amount of interest paid in respect of that year of income by the person upon money borrowed by him and where the Commissioner is satisfied that the money so borrowed has been wholly and exclusively employed by him in the production of investment income which is chargeable to tax under this Act:

Provided that—

- (i) the amount of interest which may be deducted under this paragraph shall not exceed the investment income chargeable to tax for that year of income, and where the amount of that interest paid in that year exceeds the investment income of that year, the excess shall be carried forward to the next succeeding year and deducted only from investment income and, in so far as the interest has not already been so deducted, from investment income of the subsequent years of income; and
- (ii) for the purposes of this paragraph, “investment income” means dividends and interest but excludes qualifying dividends and qualifying interest;

- (b) the amount of interest not exceeding three hundred thousand shillings paid by him in respect of that year of income upon money borrowed by him from one of the first four financial institutions specified in the Fourth Schedule and applied to the purchase or improvement of premises occupied by him during that year of income for residential purposes:

Provided that—

- (i) if any person occupies any premises for residential purposes for part only of a year of income the deduction under this paragraph shall be reduced accordingly; and
- (ii) no person may claim a deduction under this paragraph in respect of more than one residence;

- (c) deleted by Act No. 14 of 1982, s. 19;

- (d) in the case of a partner, the amount of the excess, if any, of his share of any loss incurred by the partnership, calculated after deducting the total of any remuneration and interest on capital payable to any partner by the partnership and after adding any interest on capital payable by any partner to the partnership, over the sum of any remuneration and such interest so payable to him less any such interest so payable by him;

- (e) deleted by Act No. 8 of 1978, s. 9;

- (f) the amount of any loss realized in computing, in accordance with paragraph 5(2), of the Eighth Schedule, gains chargeable to tax under section 3(2)(f); but the amount of any such loss incurred in a year of income shall be deducted only from gains under section 3(2)(f) in that year of income and, in so far as it has not already been deducted, from gains in subsequent years of income;

- (g) in the case of a business which is a sole proprietorship, the cost of medical expenses or medical insurance cover incurred for the benefit of the proprietor, subject to a limit of one million shillings per year.

- (4) Where the ascertainment of the total income of a person results in a deficit for a year of income, the amount of that deficit shall be an allowable deduction in ascertaining the total income of such person for that year and the next nine succeeding years of income:

Provided that—

- (i) any deficit for the year of income 1973 shall be regarded for the purposes of this subsection as having arisen entirely in that year of income;

(ii) in any case where the income of a married woman is deemed to be the income of her husband, the amount of any deficit in her total income existing at the date of her marriage shall be an allowable deduction in ascertaining the total income of her husband for that year and, in so far as such deficit has not already been deducted, next succeeding four years of income, to the extent of the amount of her income which is assessed on her husband in such years of income;

(iii) deleted by Act No. 4 of 2004, s. 48;

(iv) Any deficit incurred by a person as at 1st January, 2010 shall be deemed to have been incurred in that year of income.

(5) Notwithstanding subsection (4), the Minister may, on the recommendation of the Commissioner, extend the period of deduction beyond ten years where a person applies through the Commissioner for such extension, giving evidence of inability to extinguish the deficit within that period.

(6) (a) A person to whom this subsection applies who has succeeded to any business, or to a share therein, either as a beneficiary under the will or on the intestacy of a deceased person who carried on, solely or in partnership, that business shall be entitled to a deduction in the year of income in which he so succeeds in respect of such part of any deficit in the total income of the deceased for his last year of income as is attributable to any losses incurred by the deceased in the business in that year of income or in earlier years of income.

(b) This subsection applies to a person who is the widow, widower or child, of the deceased person and to a person who was an employee or partner of the deceased person in that business; and, where there are two or more such persons, each such person shall be entitled to a deduction of so much of the whole amount deductible as his share in the business under the will or on the intestacy bears to the sum of the shares of all such persons.

(5A) For the purpose of section 3(2)(g), the amount of the net gain to be included in income chargeable to tax is —

(a) deleted by Act No. 14 of 2015, s. 10(c)(i);

(b) the amount computed according to the following formula —

$A \times B/C$

Where—

A is the amount of the net gain;

B is the value of the interest derived, directly or indirectly, from immovable property in Kenya; and

C is the total value of the interest.

(7) For the purposes of this section —

(a) “scientific research” means any activities in the fields of natural or applied science for the extension of human knowledge, and when applied to any particular business includes —

(i) any scientific research which may lead to, or facilitate, an extension of that business or of businesses in that class;

(ii) any scientific research of a medical nature which has a special relation to the welfare of workers employed in that business, or in businesses of that class;

(b) expenditure of a capital nature on scientific research does not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research but, subject thereto, does include all expenditure incurred for the prosecution of, or the provision of facilities for the prosecution of, scientific research.

(8) Notwithstanding anything contained in this Act —

(a) the gains or profits of a person derived from any one of the seven sources of income respectively specified in paragraph (e) of this subsection (and in this subsection called “specified sources”) shall be computed separately from the gains or profits of that person derived from any other of the specified sources and separately from any other income of that person;

(b) where the computation of gains or profits of a person in a year of income derived from a specified source results in a loss, that loss may only be deducted from gains or profits of that person derived from the same specified source in the following year and, in so far as the loss has not already been so deducted, in subsequent years of income;

(c) the subparagraphs of paragraph (e) of this section shall be construed so as to be mutually exclusive;

(d) gains chargeable to tax under section 3(2)(f) of this Act and losses referred to in subsection (3)(f) of this section shall not be deemed income or losses derived or resulting from specified sources for the purposes of this subsection;

(e) the specified sources of income are —

- (i) rights granted to other persons for the use or occupation of immovable property;
- (ii) employment (including former employment) of personal services for wages, salary, commissions or similar rewards (not under an independent contract of service), and a self-employed professional vocation;
- (iii) employment the gains or profits from which is wife's employment income, profession the gains or profits from which is wife's professional income and wife's self-employment the gains or profits from which is wife's self employment income;
- (iv) agricultural, pastoral, horticultural, forestry or similar activities, not falling within subparagraphs (i) and (ii) of this paragraph;
 - (ivA) surplus funds withdrawn by or refunded to an employer in respect of registered pension or registered provident funds which are deemed to be the income of the employer under section 8(10);
 - (ivB) income of a licensee from one licence area or a contractor from one contract area as determined in accordance with the Ninth Schedule; and
- (v) other sources of income chargeable to tax under section 3(2) (a), not falling within subparagraph (i), (ii), (iii) or (iv) of this paragraph.

Section 22 C of Cap. 470 which it is intended to amend-

22C. Registered home ownership savings plan

(1) A depositor shall in any year of income commencing on or after 1st January, 1996 be eligible to deposit funds with a registered home ownership savings plan up to the amount deductible under subsection (2).

(2) Notwithstanding the provisions of section 16(2)(d), deduction shall be allowed in respect of the funds of a depositor under a registered home ownership savings plan in the qualifying year and the subsequent nine years of income, subject to a maximum of ninety—six thousand shillings per year of income or eighty thousand shillings in respect of each month:

Provided that for any year of income commencing on or before the 1st day of January, 2007, any interest income earned by a depositor on deposits of up to a maximum of three million shillings shall be exempt from tax.

(3) All deposits made under a registered home ownership savings plan shall be held in an account with an approved institution.

(4) Deposits in a registered home ownership savings plan shall be invested in accordance with the prudential guidelines issued by the Central Bank.

(5) A depositor may with the prior written approval of the Commissioner transfer his deposits from one approved institution to another which operates a registered home ownership savings plan.

(6) A transfer made under subsection (5) shall not be considered as a withdrawal under section 3(2)(c).

(7) A registered home ownership savings plan shall be operated in such manner as may be prescribed.

(8) For the purposes of this section and section 8—

“approved institution” means a bank or financial institution registered under the Banking Act (Cap. 488), an insurance company licensed under the Insurance Act (Cap. 487) or a building society registered under the Building Societies Act (Cap. 489);

“depositor” means an individual who has attained the age of eighteen years and does not directly or indirectly or through his spouse, child, corporation, registered business name, or any other way own an interest in a permanent

house, and is not and has not previously been a depositor under a registered home ownership savings plan;

“permanent house” means a residential house that a financial institution would accept as collateral for a mortgage, and includes any part or portion of a building, used or constructed, adapted or designed to be used for human

habitation as a separate tenancy for one family only, whether detached, semidetached or separated by party walls or floors from adjoining buildings or part or portion of such building, together with such outbuildings as are reasonably required to be used or enjoyed therewith;

“qualifying assets” deleted by Act No. 9 of 2007, s. 21(c) ;

“qualifying year” means the year in which the depositor first makes deposits under a registered home ownership savings plan.

Section 34 of cap. 470 which it is intended to amend-

34. Rates of tax

(1) Subject to this section—

- (a) tax upon the total income of an individual, other than that part of the total income comprising wife's employment income fringe benefits and the qualifying interest, shall be charged for a year of income at the individual rates for that year of income;
- (b) tax upon that part of the total income which consists of wife's employment income, wife's professional income rate and wife's self-employment income rate other than income arising from fringe benefits shall be charged for a year of income at the wife's employment income rate, wife's professional income rate and wife's self-employment income rate, as the case may be, for that year of income;
- (c) tax upon that part of the total income of an individual that comprises the qualifying interest shall be charged for a year of income at the qualifying interest rate of tax for that year of income;
- (d) tax upon that part of the total income of a person that comprises the qualifying dividends shall be charged for year of income at the qualifying dividend rate of tax for that year of income;
- (e) tax upon the total income of a person other than an individual shall be charged at the corporation rate for that year of income;
- (f) tax upon that part of total income that comprises dividends other than qualifying dividends shall be charged in a year of income at the resident withholding rate in respect of a dividend specified in the Third Schedule;
- (g) tax upon the total fringe benefits provided by an employer shall be charged at the resident corporation rate for that year of income;
- (h) tax upon gross receipts of a person chargeable to tax under section 12C shall be charged at the resident rate for that year of income;
- (i) deleted by Act No. 14 of 2015, s. 11 ;
- (j) tax upon the capital gains of a person charged under section 3(2)(f) shall be charged at the rate of five percent and shall not be subject to further taxation;
- (k) tax upon gross rental receipts of a person chargeable to tax under section 6A shall be charged at the resident rate specified under the Third Schedule for that year of income;
- (l) the transfer of interest in a person shall be charged as per provisions of the Ninth Schedule;
- (m) winnings;

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

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

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

- (a) a management or professional fee;
- (b) a royalty or natural resource income;
- (c) a rent, premium or similar consideration for the use or occupation of property;
- (c) a dividend;
- (d) interest;
- (e) a pension or retirement annuity;
- (f) 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
- (g) 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;
- (h) winnings;
- (i) a payment in respect of gains or profits from the business of transmitting messages which is chargeable to tax under section 9(2);
- (j) deleted by Act No. 14 of 2015, s. 11(b)(i); shall be charged at the appropriate non-resident rate in force at the date of payment of such income and shall not be charged to tax under subsection (1).

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

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

First Schedule, Part 1 to Cap. 470 it is intended to amend—

FIRST SCHEDULE

EXEMPTIONS

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

44. The income of a registered home ownership savings plan.

45. Income of the National Social Security Fund provided that the Fund complies with such conditions as may be prescribed.

53. Income from employment paid in the form of bonuses, overtime and retirement benefits:

Provided that this paragraph shall only apply to employees whose taxable employment income before bonus and overtime allowances does not exceed the lowest tax band provided under Head B of the Third Schedule.

Section 17 of No. 35 of 2013 which it is intended to amend—

17. Credit for input tax against output tax

(1) Subject to the provisions of this section and the regulations, input tax on a taxable supply to, or importation made by, a registered person may, at the end of the tax period in which the supply or importation occurred, be deducted by the registered person, subject to the exceptions provided under this section, from the extent that the supply or importation was acquired to make taxable supplies.

(2) If, at the time when a deduction for input tax would otherwise be allowable under subsection (1), the person does not hold the documentation referred to in subsection (3), the deduction for input tax shall not be allowed until the first tax period in which the person holds such documentation.

Provided that the input tax shall be allowable for a deduction within six months after the end of the tax period in which the supply or importation occurred.

(3) The documentation for the purposes of subsection (2) shall be—

- (a) an original tax invoice issued for the supply or a certified copy;
- (b) a customs entry duly certified by the proper officer and a receipt for the payment of tax;
- (c) a customs receipt and a certificate signed by the proper officer stating the amount of tax paid, in the case of goods purchased from a customs auction;

(d) a credit note in the case of input tax deducted under section 16(2); or

(e) a debit note in the case of input tax deducted under section 16(5).

(4) A registered person shall not deduct input tax under this Act if the tax relates to the acquisition of—

(a) passenger cars or mini buses, and the repair and maintenance thereof including spare parts, unless the passenger cars or mini buses are acquired by the registered person exclusively for the purpose of making a taxable supply of that automobile in the ordinary course of a continuous and regular business of selling or dealing in or hiring of passenger cars or mini buses; or

(b) entertainment, restaurant and accommodation services unless—

(i) the services are provided in the ordinary course of the business carried on by the person to provide the services and the services are not supplied to an associate or employee; or

(ii) the services are provided while the recipient is away from home for the purposes of the business of the recipient or the recipient's employer:

Provided that no tax shall be charged on the supply where no input tax deduction was allowed on that supply under this subsection.

(5) Where the amount of input tax that may be deducted by a registered person under subsection (1) in respect of a tax period exceeds the amount of output tax due for the period, the amount of the excess shall be carried forward as input tax deductible in the next tax period:

Provided that any such excess shall be paid to the registered person by the Commissioner where —

(a) such excess arises from making zero rated supplies; or

(b) such excess arises from tax withheld by appointed tax withholding agents; and

(c) such excess arising out of tax withheld by appointed tax withholding agents may be applied against any tax payable under this Act or any other written law, or is due for refund pursuant to section 47(4) of the Tax Procedures Act, 2015; and

- (d) the registered person lodges the claim for the refund of the excess tax within twenty-four months from the date the tax becomes due and payable.

Provided further that, notwithstanding section 17(5)(d), a registered person who, within a period of thirty-six months prior to the commencement of section 17(5)(b) and (c), has a credit arising from withholding tax, may make an application for a refund of the excess tax within twelve months from the commencement date.

(6) Subject to this Act, if a taxable supply to, or a taxable import by, a registered person during a tax period relates partly to making taxable supplies and partly for another use, the input tax deductible by the person for acquisitions made during the tax period shall be determined as follows

-
- (a) full deduction of all the input tax attributable to taxable supplies;
 - (b) no deduction of any input tax which is directly attributable to other use; and
 - (c) deduction of input tax attributable to both taxable supplies and other uses calculated according to the following formula:

$A \times B$

C

where —

A is the total amount of input tax payable by the person during the tax period on acquisitions that relate partly to making taxable supplies and partly for another use;

B is the value of all taxable supplies made by the registered person during the period; and

C is the value of all supplies made by the registered person during the period in Kenya.

(7) If the fraction of the formula in subsection (6) for a tax period—

- (a) is more than 0.90, the registered person shall be allowed an input tax credit for all of the input tax comprising component A of the formula; or
- (b) is less than 0.10, the registered person shall not be allowed any input tax credit for the input tax comprising component A of the formula.

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-

39 (2) 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; deck arrestor or similar gear and parts thereof.

8805.29.00 Other ground flying trainers and parts thereof

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.

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.

47. Tractors other than road tractors for semitrailers.

50. Goods of tariff No. 4011.30.00.

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.

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.

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;
- (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.

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

Part II of the First Schedule it is intended to amend—

4. Medical, veterinary, dental and nursing services.

18. Hiring, leasing and chartering of aircrafts.

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

ZERO-RATING

PART A –

ZERO RATED SUPPLIES

13. The supply of liquefied petroleum gas including propane.

13A. The supply of ordinary bread.

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.

Section 2 of No. 23 of 2015 which is intended to amend-

“licence” means (a) in case of excisable services, the certificate of registration or (b) in case of excisable goods, the licence, issued under section 17;

The First Schedule to No. 23 of 2015 which is intended to amend-

Part 1 paragraph 1

Imported sugar confectionary of tariff heading 17.04; Shs. 20 per kg

Imported white chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00 Shs. 200 per kg

Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 10% Shs. 100 per litre

Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 10% Shs. 200 per litre

Section 7 of No. 29 of 2016 which it is intended to amend –

7. Import declaration fee

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

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

(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;
- (b) raw materials and intermediate products imported by manufacturers approved by the Cabinet Secretary on the recommendation of the Cabinet Secretary responsible for matters relating to industry;
- (c) input for 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.

(3) Despite subsection (1)—

- (a) import declaration fee shall not be charged on the goods specified in Part A of the Second Schedule when imported or purchased before clearance through customs; or
- (b) goods imported under the East African Community Duty Remission Scheme shall be charged import declaration fee of ten thousand shillings at the time of entering the goods for home use.

(4) An importer of goods other than goods specified in Part A of the Second Schedule shall complete the prescribed import declaration form.

(5) An importer shall present a copy of the import declaration form completed under subsection (4) to the Commissioner at the time of entering the goods for home use.

(6) Out of the fee collected under subsection (2), ten per cent shall be paid into a Fund established and managed in accordance with the Public Finance Management Act, 2012 (No. 18 of 2012).

(7) The monies in the Fund under subsection (6) shall be used for the payment of Kenya's contributions to the African Union and any other international organisation to which Kenya has a financial obligation.

Second Schedule to No. 29 of 2016 which it is intended to amend-

SECOND SCHEDULE

PART A

GOODS EXEMPT FROM IMPORT DECLARATION FEE WHEN IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS

- (xv) aircraft;
- (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; and
- (xxiii) goods imported for implementation of projects a under special operating framework arrangement with the Government.

PART B

- (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; and

Section 13 of No. 40 of 2013 which it is intended to amend-

13. Procedure for appeal

- (1) A notice of appeal to the Tribunal shall —
 - (a) be in writing;
 - (b) be submitted to the Tribunal within thirty days upon receipt of the decision of the Commissioner.
- (2) The appellant shall, within fourteen days from the date of filing the notice of appeal, submit enough copies, as may be advised by the Tribunal, of—
 - (a) a memorandum of appeal;
 - (b) statements of facts; and
 - (c) the tax decision.
- (3) The Tribunal may, upon application in writing, extend the time for filing the notice of appeal and for submitting the documents referred to in subsection (2).
- (4) An extension under subsection (3) may be granted owing to absence from Kenya, or sickness, or other reasonable cause that may have prevented the applicant from filing the notice of appeal or submitting the documents within the specified period.

(5) An appellant shall serve a copy of the appeal on the Commissioner within two days after giving notice of appeal to the Tribunal.

(6) The appellant shall, unless the Tribunal orders otherwise, be limited to the grounds stated in the appeal to which the decision relates.

(7) The Tribunal shall hear and determine an appeal within ninety days from the date the appeal is filed with the Tribunal.

(8) The parties to an appeal may apply, in writing, to the Tribunal to settle the dispute out of the Tribunal and in such a case, the time taken to resolve or conclude the settlement out of the Tribunal shall be excluded when calculating the period contemplated in subsection (7).

Section 2 of Cap. 407 which is intended to amended —

2. Interpretation

In this Act, unless the context otherwise requires—

“**toll collector**” means a toll collector appointed under section 4

Section 3 of Cap. 407 which is intended to amended —

3. Toll stations, etc.

(2) The public roads set out in the First Schedule are declared to be toll roads for the purposes of this Act.

(5) Every vehicle approaching and proceeding through a toll station shall be stopped at the toll station and the toll in respect of that vehicle shall be paid to the toll collector or in such other manner as may be prescribed by the Minister.

Section 4 of Cap. 407 which is intended to amended —

4. Appointment of toll collectors

(1) The Minister shall appoint toll collectors who shall collect tolls at toll stations and perform such other duties as may be prescribed by the Minister for the purpose of this Act.

(2) Every toll station shall have a station manager appointed by the Minister.

Section 4A of Cap. 407 which is intended to amended —

4A. Agreements for road management

(3) A proposed agreement for the purpose of this section shall be laid before the National Assembly for approval prior to signature.

(4) The tolling regime provided for in an agreement to be entered into by the Minister or a roads agency designated by the Minister, shall be laid before the National Assembly for approval prior to the Minister or roads Authority designated by the Minister signing such agreement.

(5) Any agreement entered into by the Minister or a roads agency pursuant to subsection (1) without the approval of the National Assembly shall be null and void.

Section 4B of Cap. 407 which is intended to amended —

4B. Levying of tolls pursuant to agreement

(1) A person with whom the Minister or a roads agency enters into an agreement pursuant to section 4A shall be entitled to levy toll, and collect monies payable as toll on such toll road, or portion thereof, for his or her own account during the said period, and may for that purpose erect a toll station or toll stations and facilities in connection therewith, including permanent and movable weighbridges, on the toll road or portion of thereof.

(2) The person referred to in subsection (1) shall only be entitled to levy toll in accordance with the agreement with the Minister or the roads agency and the amount of such toll shall be subject to approval by the Minister.

Section 8 of Cap. 407 which is intended to amend—

8. Offences and penalties

- (1) Any person who—
- (a) drives a vehicle through a toll station except by the route designated for the passage of that vehicle; or
 - (b) refuses to stop a vehicle at a toll station and to pay the toll; or
 - (c) fraudulently or forcibly drives a vehicle through a toll station without paying the toll, shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both.

(2) In addition to the penalty under subsection (1) the court shall order the offender to pay the prescribed toll where the offence is one of failing to pay the toll.

Section 11 (3) of Cap. 485A which is intended to amend—

11. Objectives of the Authority

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

- (a) advise the Minister on all aspects of the development and operation of capital markets;
- (b) implement policies and programmes of the Government with respect to the capital markets;
- (c) employ such officers and servants as may be necessary for the proper discharge of the functions of the Authority;
- (cc) impose sanctions for breach of the provisions of this Act or the regulations made thereunder, or for non-compliance with the Authority's requirements or directions, and such sanctions may include—
 - (i) levying of financial penalties, proportional to the gravity or severity of the breach, as may be prescribed;
 - (ii) ordering a person to remedy or mitigate the effect of the breach, make restitution or pay compensation to any person aggrieved by the breach;
 - (iii) publishing findings of malfeasance by any person;
 - (iv) suspending or cancelling the listing of any securities or exchange-traded derivatives contracts, or the trading of any securities or exchange-traded derivatives contracts, for the protection of investors;
- (d) to issue guidelines and notices on all matters within the jurisdiction of the Authority under this Act;
- (e) to grant a licence to any person to operate as a stockbroker, derivatives broker, dealer or investment adviser, fund manager, investment bank, central depository or authorised securities dealer, and ensure the proper conduct of that business;
- (f) to grant approval to any person to operate as a securities exchange, derivatives exchange, credit rating agency, registered venture capital company or to operate in any other capacity which directly contributes to the attainment of the objectives of this Act and to ensure the proper conduct of that business;
- (fa) regulate spot commodity markets;

- (ff) recognize any person duly licensed by a prescribed foreign authority to carry on any licensed activity in Kenya which requires a license or an approval under this Act;
- (g) register, approve and regulate collective investment schemes;
- (h) inquire, either on its own motion or at the request of any other person, into the affairs of any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are publicly offered or traded on an approved securities exchange or on an over the counter market;
- (i) give directions to any person which the Authority has approved or to which it has granted a licence and any public company the securities of which are publicly offered or traded on an approved securities exchange or on an over the counter market;
- (j) conduct inspection of the activities, books and records of any persons approved or licensed by the Authority;
- (k) deleted by Act No. 9 of 2007, s. 46 (b);
- (l) deleted by Act No. 9 of 2007, s. 46 (b);
- (m) appoint an auditor to carry out a specific audit of the financial operations of any collective investment scheme or public company the securities of which are publicly offered or traded on an approved securities exchange or on an over the counter market, if such action is deemed to be in the interest of the investors, at the expense of such collective investment scheme or company;
- (n) grant compensation to any investor who suffers pecuniary loss resulting from the failure of a licensed broker or dealer to meet his contractual obligations;
- (o) have recourse against any person whose act or omission has resulted in a payment from the Compensation Fund;
- (p) act as an appellate body in respect of appeals against any self regulatory organization securities or exchange-traded derivatives contracts exchange, derivatives exchange or central depository in actions by parties aggrieved thereby;
- (q) co-operate or enter into agreements for mutual co-operation with other regulatory authorities for the development and regulation of cross-border activities in capital markets;
- (r) regulate and oversee the issue and subsequent trading, both in primary and secondary markets, of capital market instruments;

- (s) regulate the use of electronic commerce for dealing in securities or offer services ordinarily carried out by a licensed person;
- (t) trace any assets, including bank accounts, of any person who, upon investigation by the Authority, is found to have engaged in any fraudulent dealings in an issuer and its securities or insider trading;
- (u) in writing, order caveats to be placed against the title to such assets or prohibit any such person from operating any such bank accounts as may be directed by the Authority, pending determination of any charges instituted against that person;
- (v) prescribe notices or guidelines on corporate governance of a company whose securities have been issued to the public or a section of the public;
- (w) do all such other acts as may be incidental or conducive to the attainment of the objectives of the Authority or the exercise of its powers under this Act.

Section 18 (1) of Cap. 485A which is intended to amend—

18. Establishment of the Investor Compensation Fund

(1) There shall be established a Fund to be known as the Investor Compensation Fund for the purposes of granting compensation to investors who suffer pecuniary loss resulting from the failure of a licensed stockbroker or dealer to meet his contractual obligations and paying beneficiaries from collected unclaimed dividends when they resurface.

Section 204A of Cap. 496 which is intended to amend—

204A. Power of the Authority to settle disputes

(3) A party that is dissatisfied with the determination of the dispute by the Commissioner may appeal the determination to the Tribunal.

Section 2 of Cap. 496 which is intended to amend—

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

Section 7 of No. 9 of 1993 which it is intended to amend-

7. Establishment of Road Maintenance Levy Fund

(1) There is thereby established a fund to be known as the Road Maintenance Levy Fund (in this Act referred to as the "Fund") which shall be administered by the officer administering the Fund.

(2) The Fund shall consist of the proceeds from the levy and the transit tolls levied under the Public Roads Toll Act (Cap. 407).

(3) All monies accruing to the Fund from the levy and transit tolls shall be paid into two special accounts to be established by the Kenya Roads Board namely, a general account and a local authority account.

(3A) The monies accruing to the Fund from the levy shall be paid into the accounts established under subsection (3) in the following amounts—

- (a) in the 1998/1999 financial year, thirty percent of the printed estimates of the 1997/1998 road maintenance levy collections into the local authority account, and the balance into the general account;
- (b) in the 1999/2000 financial year, forty percent of the printed estimates of the 1997/1998 road maintenance levy collections into the local authority account, and the balance into the general account;
- (c) in the 2000/2001 and subsequent financial year, fifty percent of the printed estimates of the 1997/1998 road maintenance levy collections into the local authority account, and the balance into the general account;
- (d) in any financial year such amount as may be determined by objective estimates of the annual road maintenance costs of unclassified roads reduced by any annual expenditures by local authorities on the maintenance of such roads.

(4) (a) There shall be paid out of the general account of the Fund, such monies as are approved for repair and maintenance of public roads.

(b) There shall be paid out of the local authority's account of the Fund, such monies as may be approved by the Advisory Committee for the repair and maintenance of unclassified roads.

(5) All receipts, savings and accruals to the Fund and the balance of the Fund at the end of each financial year shall be retained for the purposes for which the Fund is established.

Section 5 of No. 2 of 1995 which it is intended to amend-

5. Functions of the Authority

(1) The Authority shall, under the general supervision of the Minister, be an agency of the Government for the collection and receipt of all revenue.

(2) In the performance of its functions under subsection (1), the Authority shall—

(a) administer and enforce—

(i) all provisions of the written laws set out in Part I of the First Schedule and for that purpose, to assess, collect and account for all revenues in accordance with those laws;

(ii) the provisions of the written laws set out in Part II of the First Schedule relating to revenue and for that purpose to assess, collect and account for all revenues in accordance with those laws;

(b) to advise the Government on all matters relating to the administration of, and the collection of revenue under the written laws or the specified provisions of the written laws set out in the First Schedule; and

(c) to perform such other functions in relation to revenue as the Minister may direct.

The Minister may, by notice in the Gazette, amend the First Schedule.

Section 16 (1) of No. 2 of 1995 which is intended to amend—

16. Funds of the Authority

(1) The funds of the Authority shall consist of—

(a) one and such amount, not exceeding two percent of the revenue estimated in the financial estimates for each financial year to be collected by the Authority under this Act as may be determined by the Minister in each financial year;

(b) three percent of the revenue actually collected in each successive three-month period in the financial year in excess of the amount estimated to be collected in respect of that period;

(c) loans and grants received by the Authority with the approval of the Minister; and

- (d) any other monies as may, with the approval of the Minister, be received by or made available to the Authority for the purpose of performing its functions.

Section 21 of No. 2 of 1995 which is intended to amend—

21. Regulations

The Board may make regulations for the carrying into effect the provisions of this Act, and in particular but without prejudice to the foregoing make regulations—

- (a) respecting the terms and conditions of service, including pensions, gratuities and other retirement benefits, of all members of staff of the Authority;
- (b) prescribing the procedure for the appointment of all members of the staff of the Authority;
- (c) prescribing the code of conduct and discipline;
- (d) respecting the administration and management of the funds of the Authority;
- (e) respecting the performance targets of the Authority.

Section 35 of No. 3 of 1997 which is intended to amended —

35. Actuarial evaluations

The Board may require the trustees of such schemes or categories of schemes as it may specify, to cause the schemes to be evaluated by an actuary appointed by the trustees with the approval of the Board and to present the actuarial report to the Chief Executive Officer at such regular intervals as the Board may specify.

Paragraph 3 (1) of the Second Schedule to No. 18 of 2015 which is intended to amended—

3. Second priority claims

(1) After the claims referred to in paragraph 2 have been paid, claims in respect of the following debts have second priority to the extent that they remain unpaid:

- (a) all wages or salaries payable to employees in respect of services provided to the bankrupt or company during the four months before the commencement of the bankruptcy or liquidation;
- (b) any holiday pay payable to employees on the termination of their employment before, or because of, the commencement of the bankruptcy or liquidation;

- (c) any compensation for redundancy owed to employees that accrues before, or because of, the commencement of the bankruptcy or liquidation;
- (d) amounts deducted by the bankrupt or company from the wages or salaries of employees in order to satisfy their obligations to other persons (including amounts payable to the Kenya Revenue Authority in accordance with Income Tax Act (Cap. 470);
- (e) any reimbursement or payment provided for, or ordered by the Industrial Court under the Labour Institutions Act, 2007 (No. 12 of 2007) to the extent that the reimbursement or payment does not relate to any matter specified in the Labour Relations Act, 2007 (No. 14 of 2007) respect of wages or other money or remuneration lost during the four months before the commencement of the bankruptcy or liquidation;
- (f) amounts that are preferential claims under section 175(2) and (3);
- (g) all amounts that are by any other written law required to be paid in accordance with the priority established by this subparagraph paid by the buyer to a seller on account of the purchase price of goods.

- (c) any compensation for redundancy owed to employees that accrues before or because of the commencement of the bankruptcy or liquidation;
- (d) amounts included by the bankrupt or company from the wages or salaries of employees in order to satisfy their obligations to other persons (including amounts payable to the Kenya Revenue Authority in accordance with Income Tax Act (Cap. 470));
- (e) any reimbursement or payment provided for, or ordered by the Industrial Court under the Labour Relations Act, 2007 (No. 12 of 2007) to the extent that the reimbursement or payment does not relate to any matter specified in the Labour Relations Act, 2007 (No. 12 of 2007) except of wages or other money or remuneration lost during the four months before the commencement of the bankruptcy or liquidation;
- (f) amounts that are potential claims under section 175(2) and (3);
- (g) all amounts that are by any other written law required to be paid in accordance with the priority established by this subparagraph paid by the buyer to a seller on account of the purchase price of goods;