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NATIONAL ASSEMBLY BILLS, 2022

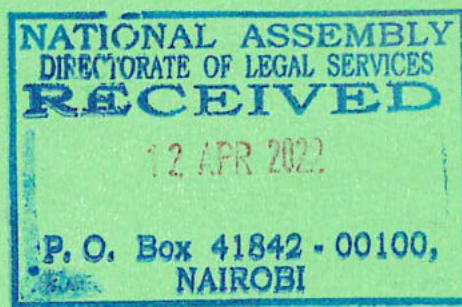
NAIROBI, 8th April, 2022

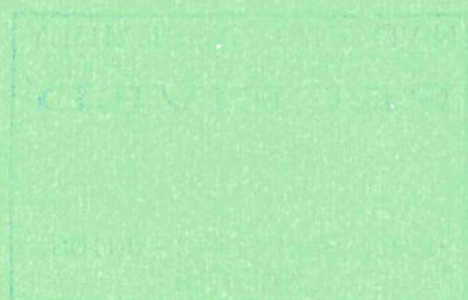
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THE FINANCE BILL, 2022

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, 2022 and shall come into operation or be deemed to have come into operation as follows —

Short title and commencement.

- (a) sections 3, 6, 11, 15, 16, 21(b) and 31, on the 1st January, 2023; and
- (b) all other sections, on the 1st July, 2022.

PART II—INCOME TAX

2. Section 2 of the Income Tax Act is amended by inserting the following new definitions in proper alphabetical sequence—

Amendment of section 2 of Cap. 470.

“fair market value” means the comparable market price available in an open and unrestricted market between independent parties acting at arm's length and under no compulsion to transact, which is expressed in terms of money or money's worth;

“financial derivative” means a financial instrument the value of which is linked to the value of another instrument underlying the transaction which is to be settled at a future date; and

“permanent home” means a place where an individual resides or which is available to that individual for residential purposes in Kenya, or where in the opinion of the Commissioner the individual's personal or economic interests are closest.

3. Section 3 of the Income Tax Act is amended in subsection (2) by adding the following new paragraph immediately after paragraph (h)—

Amendment of section 3 of Cap. 470.

- (i) gains from financial derivatives.

4. Section 4A of the Income Tax Act is amended in subsection (1) by deleting subparagraph (ii)(a) of the proviso and substituting therefor the following new subparagraph—

Amendment of
section 4A of
Cap. 470.

- (a) where the foreign exchange loss is realized by a company whose gross interest paid or payable to related persons and third parties exceeds thirty per cent of the company's earnings before interest, taxes, depreciation and amortization in any financial year.

5. Section 5 of the Income Tax Act is amended—

Amendment of
section 5 of
Cap. 470.

- (a) in subsection (5), by deleting paragraph (a) of the proviso and substituting therefor the following new paragraph—

- (a) in the case of an employee share ownership plan, the value of the benefit shall be the difference between the offer price, per share, at the date the option is granted by the employer, and the market value, per share on the date when the employee exercises the option;

- (b) in subsection (6), by deleting paragraph (a) and substituting therefor the following new paragraph—

- (a) the benefits chargeable shall be deemed to have accrued on the date the employee exercises the option.

6. Section 9 of the Income Tax Act is amended by adding the following new subsections immediately after subsection (2) —

Amendment of
section 9 of
Cap. 470.

(3) Where a resident person enters into a financial derivatives contract with a non-resident person, any gain accruing to the non-resident person from that arrangement shall be subject to tax at the rate specified in the Third Schedule.

(4) The provisions of subsection (3) shall be carried out in accordance with Regulations made by the Cabinet Secretary.

7. Section 11 of the Income Tax Act is amended by deleting subsection (3A).

Amendment of section 11 of Cap. 470.

8. Section 12E of the Income Tax Act is amended by adding the following proviso to subsection (1)—

Amendment of section 12E of Cap. 470.

Provided that this section shall not apply to a non-resident person with a permanent establishment in Kenya.

9. Section 15 of the Income Tax Act is amended—

Amendment of section 15 of Cap. 470.

(a) in subsection (2)—

(i) by deleting the words “as defined in the Second Schedule” appearing in paragraph (l);

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

(w) any donation in that year of income to a charitable organization whose income is exempt from tax under paragraph 10 of the First Schedule to this Act, or to any project approved by the Cabinet Secretary responsible for matters relating to finance;

(iii) by deleting paragraph (y);

(b) by deleting the subsection (4A).

10. Section 16 of the Income Tax Act is amended in the proviso to subsection (2)(j) by adding the following new subparagraph immediately after subparagraph (iii)(B)—

Amendment of section 16 of Cap. 470.

(C) microfinance institutions licensed under the Microfinance Act, 2006.

No. 19 of 2006.

11. The Income Tax Act is amended by repealing section 18A and replacing it with the following new section—

Repeal and replacement of section 18A of Cap. 470.

Ascertainment of gains and profits of business in a preferential tax regime.

18A. (1) Where—

(a) a resident person carries on business with a related resident person operating in a preferential tax regime; or

(b) a resident person carries on business with —

- (i) a non-resident person located in a preferential tax regime; or
- (ii) an associated enterprise of a non-resident person located in a preferential tax regime; or
- (iii) a permanent establishment of a non-resident person operating in Kenya where the non-resident person is located in a preferential tax regime,

and the business produces no gains or produces less gains than those which would have been expected to accrue from that business if the business activity was not with a party in a preferential tax regime, the gains of that resident person from that business shall be deemed to be the amount which would have been expected to accrue if that business had been conducted by an independent person dealing at arm's length, or if none of the parties were located in a preferential tax regime.

(2) For the purposes of this section, "preferential tax regime" means —

- (a) any Kenyan legislation, regulation or administrative practice which provides a preferential rate of tax to

- such income or profit, including reductions in the tax rate or the tax base; or
- (b) a foreign jurisdiction which—
- (i) does not tax income;
 - (ii) taxes income at a rate that is less than twenty per cent;
 - (iii) does not have a framework for the exchange of information;
 - (iv) does not allow access to banking information; or
 - (v) lacks transparency on corporate structure, ownership of legal entities located therein, beneficial owners of income or capital, financial disclosure, or regulatory supervision.

12. The Income Tax Act is amended by repealing section 18B of the Act and substituting therefor the following new section—

Repeal and substitution of section 18B of Cap. 470.

Application of sections 18C, 18D, 18E and 18F.

18B. The provisions of sections 18B, 18C, 18D, 18E, and 18F shall apply to returns for the year of income 2022 and subsequent years of income.

13. The Income Tax Act is amended by inserting the following new sections immediately after section 18B—

Insertion of new sections 18C, 18D, 18E and 18F in Cap. 470.

Notification to the
Commissioner.

18C. (1) A multinational enterprise group or a constituent entity, other than an excluded multinational enterprise group, that is resident in Kenya, shall notify the Commissioner, not later than the last day of the reporting financial year of that group—

- (a) whether or not it is the ultimate parent entity of the group;
- (b) in case it is not the ultimate parent entity of the group, whether or not it is a surrogate parent entity; or
- (c) in case paragraphs (a) and (b) do not apply, the identity of the constituent entity which is the ultimate parent entity or surrogate parent entity and the tax residence of that constituent entity.

(2) The notification referred to in subsection (1) shall be made to the Commissioner in such form as the Commissioner may specify.

Filing of country-
by-country report,
master file and
local file.

18D. (1) An ultimate parent entity or a constituent entity of a multinational enterprise group with a gross turnover of ninety-five billion shillings (including extraordinary or investment income) that is resident in Kenya shall file a country-by-country report with the Commissioner of its financial activities in Kenya and for all other jurisdiction where the group has taxable presence.

(2) An ultimate parent entity shall file the country-by-country report referred to under subsection (1) not later than twelve months after the last day of the reporting financial year of the group.

(3) In addition to the provisions in subsection (1), an ultimate parent entity or a constituent entity of a multinational enterprise group shall file a master file and a local file to the Commissioner in such manner as the Commissioner may specify.

(4) The master file and the local file shall be filed not later than six months after the last day of the reporting financial year of the multinational enterprise group.

(5) A country-by-country report filed under subsection (1) shall consist of—

- (a) the information relating to the identity of each constituent entity, its jurisdiction of tax residence, if different, jurisdiction where such entity is organized, and the nature of the main business activity or activities of such entity;
- (b) the group's aggregate information including information relating to the amount of revenue, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash or cash equivalents with regard to each jurisdiction where the group has taxable presence; and
- (c) any other information as maybe required by the Commissioner.

- (6) A master file under subsection (3) shall contain—
 - (a) a detailed overview of the group;
 - (b) the group's growth engines;
 - (c) a description of the supply chain of the key products and services;
 - (d) the group's research and development policy;
 - (e) a description of each constituent entity's contribution to value creation;
 - (f) information about intangible assets and the group intercompany agreements associated with them;
 - (g) information on any transfer of intangible assets within the group during the tax period, including the identity of the constituent entities involved, the countries in which those intangible assets are registered and the consideration paid as part of the transfer;
 - (h) information about financing activities of the group;
 - (i) the consolidated financial statements of the group;
 - (j) tax rulings, if any, made in respect of the group; and
 - (k) any other information that the Commissioner may require.
- (7) A local file under subsection (3) shall contain —

- (a) details and information on the resident constituent entity's activities within the multinational enterprise group;
- (b) management structure of the resident constituent entity;
- (c) business strategies including structuring, description of the material-controlled transactions, the resident constituent entity's business and competitive environment;
- (d) the international transactions and amounts paid to the resident constituent entity or received by the entity; and
- (e) any other information that the Commissioner may require.

(8) Where there are more than one constituent entities of the same multinational enterprise group that are resident in Kenya, the multinational enterprise group may designate one of such constituent entities as a surrogate parent entity.

(9) A resident surrogate parent entity of a multinational enterprise group shall not be required to file a country-by-country report with the Commissioner with respect to the reporting financial year of the group, if—

- (a) the ultimate parent entity is obligated to file a country-by-country report in its jurisdiction of tax residence;
- (b) the jurisdiction in which the ultimate parent entity is resident for tax purposes has

an international agreement and a competent authority agreement in force; and

- (c) the Commissioner has not notified the resident constituent entity in Kenya of a systemic failure, if any.

(10) A resident constituent entity of a multinational enterprise group shall not be required to file a country-by-country report with the Commissioner with respect to the reporting financial year of the group, if —

- (a) a non-resident surrogate parent entity files the country-by-country report on the group with the competent authority of the tax jurisdiction of the entity;
- (b) the jurisdiction in which the non-resident surrogate parent entity is resident requires the filing of country-by-country reports;
- (c) the competent authority of the jurisdiction in which the non-resident surrogate parent entity is resident and Kenya have a competent authority agreement for the exchange of information;
- (d) the competent authority in the jurisdiction where the non-resident surrogate parent is resident has not notified Kenya of a systemic failure; or
- (e) the non-resident parent entity has notified the competent

authority in the jurisdiction of its tax residence that the entity is the designated surrogate parent entity of the group.

No. 47 of 2015.

(11) The Commissioner shall maintain the confidentiality of the information contained in a return submitted in accordance with section 6(1) and section 6A(2) of the Tax Procedures Act, 2015.

Offences and penalties.

18E. A person who fails to comply with the provisions of sections 18C and 18D commits an offence and shall be subject to the penalties prescribed under the Tax Procedures Act, 2015.

Definitions.

18F. For the purposes of sections 18C, 18D and 18E —

“competent authority agreement” means an agreement between authorized representatives of jurisdictions which are parties to an international agreement that requires the exchange of country-by-country reports;

“consolidated financial statements” means financial statements of a multinational enterprise group in which the assets, liabilities, income, expenses and cash flows of the ultimate parent entity and the constituent entities are presented as those of a single enterprise;

“constituent entity” means—

- (a) any separate business unit of a multinational enterprise group that is included in the consolidated financial statements of the multinational enterprise group for financial reporting purposes, or which would be so included if equity

interests in such business unit of a multinational enterprise group were traded on a public securities exchange;

- (b) any such business unit that is excluded from the multinational enterprise group's consolidated financial statements solely on size or materiality grounds;
- (c) any permanent establishment of any separate business unit of the multinational enterprise group included in paragraphs (a) or (b) provided that the business unit prepares a separate financial statement for such permanent establishment for financial reporting, regulatory, tax reporting, or internal management control purposes;

"a country-by-country report" means a report filed under section 18D(1) describing the financial activities of each constituent entity in all the jurisdictions where the group has taxable presence;

"excluded multinational enterprise group" means, with respect to any financial year of the group, a group having total consolidated group revenue of less than the amount specified in section 18D(1);

"group" means a collection of enterprises related through ownership or control such that it is either required to prepare consolidated financial statements for financial reporting purposes under applicable accounting principles or would be so required if equity interests in any of the enterprises

were traded on a public securities exchange and includes a single enterprise with one or more foreign permanent establishments;

“international agreement” means a bilateral or multilateral tax agreement to which Kenya is a party which provides for the exchange of tax information between Kenya and other jurisdictions;

“local file” means a file under section 18D(7) containing material transactions of the local taxpayer;

“master file” means a file under section 18D(6) containing standardized information relevant for all multinational enterprise group members;

“multinational enterprise group” means a group that includes two or more enterprises which are resident in different jurisdictions including an enterprise that carries on business through a permanent establishment or through any other entity in another jurisdiction;

“reporting financial year” means an annual accounting period with respect to which the ultimate parent entity of the multinational enterprise group prepares its financial statements;

“surrogate parent entity” means one constituent entity of the multinational enterprise group appointed by such group to file the country-by-country report in that constituent entity’s jurisdiction of tax residence, on behalf of the group;

“systemic failure” means failure to comply with the competent authority agreement for reasons other than those provided in the agreement;

“ultimate parent entity” means an entity that—

- (a) is resident in Kenya for tax purposes;
- (b) is not controlled by another entity; and
- (c) owns or controls a multinational enterprise group.

14. Section 31 of the Income Tax Act is amended in subsection (1)(a) by deleting the words “he has paid a premium for an insurance made by him on his life or the life of his wife or of his child” and substituting therefor the words “the individual has paid a premium for an insurance made by the individual on the individual’s life or the life of the individual’s spouse or child”.

Amendment of
section 31 of
Cap. 470.

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

Amendment of
section 34 of
Cap. 470.

- (a) in subsection (1), by deleting the expression “five per cent” appearing in paragraph (j) and substituting therefor the expression “fifteen per cent”;
- (b) in subsection (2), by adding the following new paragraph immediately after paragraph (p) —
 - (q) gains from financial derivatives.

16. Section 35 of the Income Tax Act is amended in subsection (1) by adding the following new paragraph immediately after paragraph (o) —

Amendment of
section 35 of
Cap. 470.

- (p) gains from financial derivatives.

17. Section 37 of the Income Tax Act is amended by deleting subsection (3).

Amendment of
section 37 of
Cap. 470.

18. Section 39 of the Income Tax Act is amended —

Amendment of
section 39 of
Cap. 470.

- (a) in subsection (2), by deleting the expression “section 10(e)” and substituting therefor the expression “section 10(1)(e)”;
- (b) in subsection (3), by deleting the expression “section 10(e)” wherever it appears and

substituting therefor the expression “section 10(1)(e)”; and

- (c) in subsection (4), by deleting the expression “section 10(e)” and substituting therefor the expression “section 10(1)(e)”.

19. The First Schedule to the Income Tax Act is amended—

Amendment of
the First
Schedule to
Cap. 470.

- (a) by deleting the following paragraph—

57. The income or principal sum of a registered family trust.

- (b) by deleting the following paragraph —

58. Any capital gains relating to the transfer of title of immovable property to a family trust.

- (c) by adding the following new paragraph immediately after paragraph 60—

61. Any capital gains relating to the transfer of title of immovable property to a family trust.

20. The Second Schedule to the Income Tax Act is amended—

Amendment of
the Second
Schedule to
Cap. 470.

- (a) in the proviso to paragraph (1), by deleting the words “through the national grid” appearing in the definition of “manufacture”;

- (b) by inserting the following new paragraph immediately after paragraph (1A) —

(1B) The provisions of paragraph (1A) —

- (a) shall only apply to items listed under paragraph 1(a)(I) and (ii) and paragraph 1(b)(a) of the Second Schedule; and

- (b) shall not apply to investments which, due to the nature of their business, have to be located in places which are outside Nairobi City County and Mombasa County.

21. The Third Schedule to the Income Tax Act is amended in paragraph 3 of Head B—

Amendment of
the Third
Schedule to
Cap. 470.

- (a) by deleting the expression “one-point five percent” appearing in paragraph 12 and substituting therefor the expression “three percent; and
- (b) by adding the following new subparagraph immediately after subparagraph (q) —
 - (r) in the case of gains from financial derivatives, fifteen per cent of such gains.

PART III —VALUE ADDED TAX

22. Section 5 of the Value Added Tax Act, 2013 is amended in subsection (9) by deleting the words “sell or provide services, goods or other property” and substituting therefor the words “sell goods or provide services”.

Amendment of
section 5 of No.
35 of 2013.

23. Section 10 of the Value Added Tax Act, 2013 is amended by inserting the following new subsection immediately after subsection (1)—

Amendment of
section 10 of
No. 35 of 2013.

(1A) The provisions of subsection (1) shall not apply to taxable supplies made under section 5(7).

24. Section 17 of the Value Added Tax Act, 2013 is amended —

Amendment of
section 17 of
No. 35 of 2013.

- (a) in subsection (1), by inserting the words “in a return for the period” immediately after the words “deducted by the registered person”;
- (b) in subsection (3), by adding the following new paragraph immediately after paragraph (e) —
 - (f) any other documentation that the Commissioner may require for the purposes of validating the input tax.

25. Section 22 of the Value Added Tax Act, 2013 is amended in subsection (4) by adding the following proviso—

Amendment of
section 22 of
No. 35 of 2013.

Provided that—

- (i) the Tax Procedures Act, 2015 shall apply with regard to imposition of interest and penalties; and
- (ii) in cases where interest becomes payable it shall not, in aggregate, exceed the principal tax.

No. 29 of 2015.

26. The Value Added Tax Act, 2013 is amended by repealing section 30.

Repeal of
section 30 of
No. 35 of 2013.

27. Section 34 of the Value Added Tax Act, 2013 is amended in subsection (1) by adding the following proviso—

Amendment of
section 34 of
No. 35 of 2013.

Provided that this section shall not apply to persons supplying imported digital services over the internet or an electronic network or through a digital marketplace.

28. 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—

(i) by deleting paragraph 63:

Provided that notwithstanding this subparagraph, any approval granted by the Cabinet Secretary before the commencement thereof in respect of the supply of taxable goods and which is in force at such commencement shall continue to apply until the supply of the exempted taxable goods is made in full.

(ii) by deleting paragraph 108;

(iii) inserting the words “and pellets” immediately after the word “briquettes” appearing in paragraph 137; and

(iv) by adding the following new paragraphs immediately after paragraph 139—

Plant and machinery of chapter 84 and 85 imported by manufacturers of pharmaceutical products or investors in the manufacture of pharmaceutical products upon the recommendation of the Cabinet Secretary responsible for matters relating health.

141. Medical oxygen supplied to registered hospitals.

142. Urine bags, adult diapers, artificial breasts, colostomy or ileostomy bags for medical use.

143. Inputs and raw materials used in the manufacture of passenger motor vehicles.

144. Locally Manufactured passenger motor vehicles:

Provided that in this paragraph “locally manufactured passenger motor vehicle” shall mean a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose total value comprises at least thirty per cent of parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

(b) in Part II, by deleting paragraph 27:

Provided that notwithstanding this paragraph, any approval granted by the Cabinet Secretary before the commencement thereof in respect of the supply of taxable services and which is in force at such commencement shall continue to apply until the supply of the taxable services is made in full.

29. The Second Schedule to the Value Added Tax Act, 2013 is amended—

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

(a) in part A, by deleting the following paragraph—

20. The supply of maize (corn) flour, cassava flour, wheat or meslin flour by more than ten per cent in weight:

Provided that this paragraph shall be in operation for a period of six months after assent.

(b) in Part B, by deleting paragraph 9.

PART IV—TAX APPEALS TRIBUNAL

30. The Tax Appeals Tribunal Act, 2013 is amended by repealing section 32 and replacing it with the following new section—

Repeal and replacement of section 32 of No. 40 of 2013.

Appeals to the High Court against decisions of the Tribunal.

32. (1) A party dissatisfied with a decision of the Tribunal under section 29 may appeal to the High Court within thirty days after being notified of the decision or within such longer period as the High Court may allow.

(2) Before filing an appeal under subsection (1), the appellant shall deposit with the Commissioner fifty per cent of the disputed tax in a special account at the Central Bank of Kenya.

(3) The provisions of subsection (2) shall not apply where the appeal has been filed by the Commissioner.

(4) The High Court shall hear appeals under this section in accordance with rules prescribed by the Chief Justice.

(5) Where all appeals have been exhausted and the court has ruled in favour of the aggrieved person, the Commissioner shall refund the monies deposited by that person under subsection (2) within thirty days after the determination of the court.

PART V—EXCISE DUTY

31. Section 10 of the Excise Duty Act, 2015 is amended by adding the following proviso to subsection (1) —

Amendment of
section 10 of
No. 23 of 2015.

Provided that the Commissioner may, by notice in the *Gazette* and with the approval of the Cabinet Secretary, exempt specified products from inflation adjustment after considering the circumstances prevailing in the economy in that year in respect of such products.

32. Section 11 of the Excise Duty Act, 2015 is amended in paragraph (a) by deleting the words “other than to a purchaser”.

Amendment of
section 11 of No.
23 of 2015.

33. Section 36 of the Excise Duty Act, 2015 is amended in subsection (4) by adding the following proviso—

Amendment of
section 36 of
No. 23 of 2015.

Provided that —

- (i) the Tax Procedures Act, 2015 shall apply with regard to imposition of interest and penalties; and

No. 29 of 2015.

- (ii) in cases where interest becomes payable it shall not, in aggregate, exceed the principal tax.

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

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

- (a) in paragraph 1 of Part I, by deleting the following descriptions and corresponding rates of duty appearing in the second table—
 - (i) electronic cigarettes;
 - (ii) cartridges for use in electronic cigarettes;
- (b) in the second table appearing in paragraph 1 of Part I—
 - (i) by deleting the expression “Shs. 12.17 per litre” in respect of the tariff description “Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter” and substituting therefor the expression “Shs. 13.30 per litre”;
 - (ii) by deleting the expression “10%” in respect of the tariff description “Cosmetics and Beauty products of tariff heading No. 3303, 3304, 3305 and 3307” and substituting therefor the expression “15%”;
 - (iii) by deleting the expression “Shs. 6.03 per litre” in respect of the tariff description “Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices” and substituting therefor the expression “Shs. 6.60 per litre”;
 - (iv) by deleting the expression “Shs. 121.85 per litre” in respect of the tariff description “Beer, cider, perry, mead, opaque beer and mixtures of fermented beverages with non-alcoholic beverages and spirituous beverages of alcoholic strength not exceeding 6%” and substituting therefor the expression “KSh. 134 per litre”;

- (v) by deleting the expression "shs. 121.85 per kg" in respect of the tariff description "powdered beer" and substituting therefor the expression "Shs. 134 per kg";
- (vi) by deleting the expression "shs. 208.20 per litre" in respect of the tariff description "Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits" and substituting therefor the expression "Shs. 229 per litre";
- (vii) by deleting the expression "shs. 278.70 per litre" in respect of the tariff description "Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%" and substituting therefor the expression "Shs. 335.30 per litre";
- (viii) by deleting the expression "Shs. 13,906.04 per kg" in respect of the tariff description "Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes" and substituting therefor the expression "Shs. 13,296.6 per kg";
- (ix) by deleting the expression " Shs. 3,447.61 per mille" in respect of the tariff description "Cigarette with filters (hinge lid and soft cap)" and substituting therefor the expression "Shs. 3,825.99 per mille";
- (x) by deleting the expression "Shs. 2,502.74 per mille" in respect of the tariff description "Cigarettes without filters (plain cigarettes)" and substituting therefor the expression "Shs. 2,752.97 per mille";
- (xi) by deleting the expression "Shs. 9,734.45 per kg" in respect of the tariff description "Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences" and substituting therefor the expression "Shs. 10,707.88 per kg";

- (xii) by deleting the expression “shs. 12,185.16 per unit” in respect of the tariff description “Motorcycles of tariff no. 8711 other than motorcycle ambulances and locally assembled motorcycles” and substituting therefor the expression “Shs. 13,403.64 per unit”;
- (xiii) by deleting the expression “shs. 36.74 per kg” in respect of the tariff description “Imported sugar confectionary of tariff heading 17.04” and substituting therefor the expression “Shs. 40.37 per kg”;
- (xiv) by deleting the tariff description “White chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00” and the corresponding rate of excise duty and substituting therefor the following new tariff description and corresponding rate of excise duty—

<i>Description</i>	<i>Tariff</i>
	<i>Description</i>
White chocolate, chocolate in blocks, slabs or bars of tariff nos. 1806.31.00, 1806.32.00, and 1806.90.00	KSh. 242.29 per kg

- (xv) by deleting the expression “10%” in respect of the tariff description “Jewellery of tariff heading 7113 and imported jewellery of tariff heading 7117” and substituting the expression “15%”;
- (xvi) by deleting the tariff description “Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products) and the proviso thereto and substituting therefor the tariff description “Glass bottles (excluding glass bottles for packaging of pharmaceutical products)”;
- (xvii) by deleting the tariff description “Products containing nicotine or nicotine substitutes intended for inhalation without combustion

or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences” and the corresponding rate of excise duty and substituting therefor the following new tariff description and corresponding rate of excise duty—

<i>Description</i>	<i>Tariff Description</i>
Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences	KSh. 2,500
(xviii) by inserting the expression “and 3923.90.90” immediately after the expression “3923.30.90” appearing in the tariff description “Articles of plastic of tariff heading 3923.30.00”;	
(xix) by inserting the expression “and imported potatoes of tariff numbers 0710.10.00, 2004.10.00 and 2005.20.00” immediately after the expression “07.01” appearing in the tariff description “Imported potatoes, potato crisps and potato chips of tariff heading 07.01”.	

- (c) by adding the following new items at the end of the second table appearing in paragraph 1 of Part I—

<i>Description</i>	<i>Rate of Excise Duty</i>
Electronic cigarettes and other nicotine delivery devices	40%
Liquid nicotine for electronic cigarettes	KSh. 70 per millilitre
Ice cream and other edible ice whether or not containing cocoa of tariff number 2105.00.00	15%

- (d) in Part II —

- (i) by deleting the expression “seven-point five per cent” appearing in paragraph 4A and substituting therefor the expression “twenty per cent”;
- (ii) by deleting the expression “seven-point five per cent” appearing in paragraph 4B and substituting therefor the expression “twenty per cent”;
- (iii) by deleting the expression “seven-point five per cent” appearing in paragraph 4C and substituting therefor the expression “twenty per cent”;
- (iv) by deleting the expression “seven-point five per cent” appearing in paragraph 4D and substituting therefor the expression “twenty per cent”;
- (v) by adding the following new paragraph immediately after paragraph 5—

6. Excise duty on fees charged on advertisement by television stations, print media, billboards and FM radio stations on alcoholic beverages, betting, and gaming, lottery and prize competitions shall be at the rate of fifteen per cent.

35. The Second Schedule to the Excise Duty Act, 2015 is amended in Part A by adding the following new paragraphs immediately after paragraph 14—

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

15. Fertilized eggs of tariff numbers 0407.11 and 0407.19 imported by hatcheries, upon recommendation by the Cabinet Secretary responsible for matters relating to livestock.

16. Neutral spirit imported or purchased locally by registered pharmaceutical manufacturers upon approval by the Commissioner.

17. Locally manufactured passenger motor vehicles:

Provided that in this paragraph, “locally manufactured passenger motor vehicle” means a motor vehicle for the transportation of passengers which is manufactured in Kenya and whose total value comprises at least thirty per cent of parts designed and manufactured in Kenya by an original equipment manufacturer operating in Kenya.

PART VI—TAX PROCEDURES

36. Section 9 of the Tax Procedures Act, 2015 is amended in paragraph (b)(iii) by inserting the words “whether the entity is carrying out business or not” immediately after the words “the trust”.

Amendment of section 9 of No. 29 of 2015.

37. Section 31 of the Tax Procedures Act, 2015 is amended by adding the following new subsection immediately after subsection (4) –

Amendment of section 31 of No. 29 of 2015.

(5) In the case of value added tax, 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.

38. The Tax Procedures Act, 2015 is amended by repealing section 40 and replacing it with the following new section —

Repeal and replacement of section 40 of No. 29 of 2015.

Security on property for unpaid tax.

40. (1) Where a taxpayer, being the owner of property in Kenya, fails to pay a tax by the due date, the Commissioner may notify the Registrar in writing that the property, to the extent of the taxpayer’s interest in the property, shall be the subject of a security for the unpaid tax specified in the notification:

Provided that the Commissioner shall, within seven days from the date of the notification to the Registrar, by notice in writing inform the taxpayer and any other person who may have an interest in the property about the notification.

(2) Where the Registrar has been notified by the Commissioner under subsection (1), the Registrar shall, without levying or charging a fee, register the Commissioner's notification as if it were an instrument of restraint on the disposal, mortgage on, or charge, as the case may be, the property specified in the notification.

(3) A registration under subsection (2) shall, subject to any prior restraint on disposal, mortgage or charge, operate as a legal restraint on the disposal, mortgage, or charge on, the property to secure the amount of the unpaid tax, and any prior restraint shall supersede the Commissioner's notification.

(4) The Commissioner shall, upon the payment of the whole of the amount of unpaid tax secured under this section, direct the Registrar in writing to cancel the notification made under subsection (2), and the Registrar shall, without levying or charging a fee, record the cancellation of the notification and the notification shall cease to apply.

(5) Where the taxpayer fails to pay the tax liability described in the notification under subsection (1) within two months after receipt of the notification, the Commissioner or authorised officer may, at the cost of the taxpayer, dispose of the property that is the subject of the restraint on disposal, mortgage or charge, by public auction or private treaty, or as provided for under the relevant Act for the recovery of the tax.

(6) Subject to section 34, where the property is subject to a prior restraint, that prior restraint shall have priority if the property is disposed of under subsection (5).

(7) For the purpose of this section—

“property” means land or building, aircraft, ship, motor vehicle, or any other property which the Commissioner may deem sufficient to serve as security for unpaid taxes;

“Registrar” includes—

(a) the Land Registrar defined in section 3 of this Act;

No.5 of 2006.

(b) the Registrar of Ships appointed under section 14 of the Kenya Maritime Authority Act, 2006;

No. 21 of 2013.

(c) the Director-General of the Kenya Civil Aviation Authority appointed under section 19 of the Civil Aviation Act, 2013;

No. 33 of 2012.

(d) the Director-General of the National Transport and Safety Authority appointed under section 15 of the National Transport and Safety Authority Act, 2012; or

(e) any other person who the Commissioner is satisfied has authority to hold property sufficient to serve as security for unpaid taxes;

No. 5 of 2006.

No. 4 of 2009.

No. 3 of 2012.

No. 6 of 2012.

No. 33 of 2012.

No. 21 of 2013.

“relevant Act” includes the Kenya Maritime Authority Act, 2006, Merchant Shipping Act, 2009, Civil Aviation Act, 2013, Land Registration Act, 2012, Land Act 2012, National Transport and Safety Act, 2012, or any other Act that provides for the registration of property.

39. The Tax Procedures Act, 2015, is amended by repealing section 47 and replacing it with the following new section—

Repeal and replacement of section 47 of No. 29 of 2015.

Offset or refund of overpaid tax.

47. (1) Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner, in the prescribed form—

- (a) to offset the overpaid tax against the taxpayer's future tax liabilities; or
- (b) for a refund of the overpaid tax within five years, or six months in the case of value added tax, after the date on which the tax was overpaid:

(2) The Commissioner shall ascertain and determine an application under subsection (1) within ninety days and where the Commissioner ascertains that there was an overpayment of tax—

- (a) in the case of an application under subsection (1)(a), apply the overpaid tax to such future tax liability; and
- (b) in the case of an application under subsection (1)(b), refund the overpaid tax within a period of two years from the date of the application.

(3) The Commissioner may, for purposes of ascertaining the validity of an application under subsection (1), subject the application to an audit.

(4) Where the application is for a refund of tax under subsection (1)(b), the Commissioner shall apply the overpayment in the following order—

- (a) in payment of any other tax owing by the taxpayer under the specific tax law;
- (b) in payment of a tax owing by the taxpayer under any other tax law; and
- (c) any remainder shall be refunded to the taxpayer.

(5) Where the Commissioner fails to refund the overpaid tax within the period specified in subsection (2)(b), the amount due shall attract interest of one per cent for each month or part thereof during which the amount remains unpaid.

(6) Where the Commissioner notifies a taxpayer that an application under subsection (1)(a) has been ascertained and applies the overpaid tax liability to offset an outstanding tax in accordance with subsection (2)(a), interest or penalties shall not accrue on the amount applied to offsetting the outstanding tax liability from the date of the notification.

(7) Where the Commissioner has applied the overpaid tax to offset an outstanding tax liability under subsection (2)(a), any outstanding tax after such application shall accrue interest and penalties in accordance with this Act.

Cap. 470.

(8) Notwithstanding any other provision of this section, where a person overpays an instalment tax due under section 12 of the Income Tax Act, the Commissioner shall apply the overpaid tax to offset the taxpayer's future instalment tax liability.

(9) Where, after the application of the overpaid tax under subsection (8), the Commissioner later determines that there was no overpayment of instalment tax, the amount of the tax that was used to offset the taxpayer's future instalment tax liabilities under subsection (8) shall be treated as a tax due to the Commissioner in the subsequent tax period.

(10) The amount due under subsection (9) shall be due from the date that the Commissioner applied that amount to offset an instalment tax liability.

(11) The Commissioner shall notify the taxpayer in writing of the amount due under subsection (9) and specify in the notification—

- (a) the interest on the amount due; and
- (b) any penalties due in respect of the amount due.

(12) A person aggrieved by a decision of the Commissioner under this section may appeal to the Tribunal within thirty days after being notified of the decision.

40. The Tax Procedures Act, 2015 is amended by inserting the following new sections immediately after section 47—

Insertion of new sections 47A and 47B in No. 29 of 2015.

Refund of tax paid in error.

47A. (1) Where tax has been paid in error, the Commissioner shall, except as otherwise provided in this Act or the relevant tax law, refund such tax.

(2) In processing a refund under subsection (1), the provisions of section 47(1), (2), (3), (4) and (5) shall apply, with the necessary modifications.

(3) For the purposes of this section, “tax paid in error” means any tax paid which the Commissioner is satisfied ought not to have been paid.

Refund of tax paid on exempted or zero-rated supply.

47B. The Commissioner may, upon approval by the Cabinet Secretary, refund a tax paid in error in any case where the supply is exempt or zero-rated under the Act but such exemption or the zero rating was not processed within the specified period due to circumstances beyond the control of the taxpayer.

41. Section 51 of the Tax Procedures Act, 2015 is amended —

Amendment of section 51 of No. 29 of 2015.

- (a) in subsection (4), by deleting the word “immediately” and substituting therefor the words “within a period of fourteen days”;
- (b) by deleting the introductory words of subsection (7) and substituting therefor the words “The Commissioner shall consider and may allow an application under subsection (6) if”;
- (c) by inserting the following new subsection immediately after subsection (7)—

(7A) The Commissioner shall notify the taxpayer of the decision made under subsection (7) within fourteen days after receipt of the application.

- (d) by deleting subsection (11) and substituting therefor the following new subsections —

(11) The Commissioner shall make the objection decision within sixty days from the date of receipt of a valid notice of objection.

(12) A person who is dissatisfied with the decision of the Commissioner under subsection (11) may appeal to the Tribunal within thirty days after being notified of the decision.

42. The First Schedule to the Tax Procedures Act, 2015 is amended by adding the following paragraph immediately after paragraph (14)—

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

(15) Registration of a trust.

PART VII—MISCELLANEOUS FEES AND LEVIES

43. Section 9B of the Miscellaneous Fees and Levies Act, 2016 is amended in paragraph (b) by inserting the words “and levies” immediately after the word “fees”.

Amendment of section 9 of No. 29 of 2016.

44. The First Schedule to the Miscellaneous Fees and Levies Act, 2016, is amended—

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

(a) in Part I—

(i) by inserting the following new description and corresponding rate of export levy in the table in proper numerical order—

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Export levy rate</i>
2601	Iron ores and concentrates, including roasted iron pyrites	USD 175 per tonne

- (ii) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4101.20.00 and substituting therefor the expression “50% or USD 0.32”;
- (iii) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4102.21.00 and substituting therefor the expression “50% or USD 0.32”;

- (iv) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4102.29.00 and substituting therefor the expression "50% or USD 0.32";
- (v) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4103.20.00 and substituting therefor the expression "50% or USD 0.32";
- (vi) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4103.30.00 and substituting therefor the expression "50% or USD 0.32";
- (vii) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4103.90.00 and substituting therefor the expression "50% or USD 0.32";
- (viii) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4104.19.00 and substituting therefor the expression "50% or USD 0.32";
- (ix) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4301.60.00 and substituting therefor the expression "50% or USD 0.32";
- (x) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4101.40.00 and substituting therefor the expression "50% or USD 0.32";
- (xi) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4101.50.00 and substituting therefor the expression "50% or USD 0.32";
- (xii) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4101.90.00 and substituting therefor the expression "50% or USD 0.32";
- (xiii) by deleting the expression "80% or USD 0.52" appearing in tariff no. 4102.10.00 and substituting therefor the expression "50% or USD 0.32";

- (xiv) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4301.10.00 and substituting therefor the expression “50% or USD 0.32”;
- (xv) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4301.80.00 and substituting therefor the expression “50% or USD 0.32”;
- (xvi) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4301.90.00 and substituting therefor the expression “50% or USD 0.32”;
- (xvii) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4302.11.00 and substituting therefor the expression “50% or USD 0.32”;
- (xviii) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4302.19.00 and substituting therefor the expression “50% or USD 0.32”;
- (xix) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4302.20.00 and substituting therefor the expression “50% or USD 0.32”;
- (xx) by deleting the expression “80% or USD 0.52” appearing in tariff no. 4302.30.00 and substituting therefor the expression “50% or USD 0.32”;
- (b) in paragraph (1) of Part III, by deleting the words “the beginning of every financial year in accordance with this paragraph” and substituting therefor the words “at a date not later than the 1st October of every financial year in accordance with the formula specified in paragraph (2)”.

45. 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 inserting the following new item immediately after item (xxv) —

(xxva) inputs and raw materials imported by manufacturers of pharmaceutical products on

the recommendation of the Cabinet Secretary responsible for matters relating to health.

- (b) in Part B, by inserting the following new item immediately after item (viii) –

(viiiia) inputs and raw materials imported by manufacturers of pharmaceutical products on the recommendation of the Cabinet Secretary responsible for matters relating to health.

PART VIII—MISCELLANEOUS

46. Section 133 of the Evidence Act is amended—

Amend of
section 133 of
Cap. 80.

- (a) in subsection (1), by deleting the words “to income tax, customs or excise” and substituting therefor the words “the laws specified in the First Schedule to the Kenya Revenue Authority Act, 1995”;

No. 2 of 1995.

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

(2) For the purposes of this section, “revenue officer” means any officer employed in or about the business of any public office for the collection of public revenue.

47. Section 2 of the Capital Markets Act is amended in the definition of “investment advisor” by deleting paragraph (3).

Amendment of
section 2 of Cap.
485A.

48. Section 29 of the Capital Markets Act is amended in subsection (1) —

Amendment of
section 29 of
Cap. 485A.

- (a) by deleting the words “a company incorporated under the Companies Act with such minimum share capital” appearing in paragraph (a) and substituting therefor the words “such legal entity as may be prescribed in the Regulations”;
- (b) by deleting the words “director and at least one employee who is the chief executive of the applicant company, have” appearing in paragraph (c) and substituting therefor the words “the director, chief executive officer or such other person who directs, conducts, manages or supervises the business of the applicant has”.

49. Section 10 of the Insurance Act is amended —Amendment of
section 10 of
Cap. 487.

- (a) in subsection (4), by deleting the expression “section 21” and substituting therefor the expression “section 21A”;
- (b) in subsection (8), by deleting the expression “section 21” and substituting therefor the expression “section 21A”.

50. Section 33 of the Unclaimed Financial Assets Act, 2011 is amended by deleting subsection (6) and substituting therefor the following new subsection —Amendment of
Section 33 of
No. 40 of 2011.

(6) The penalties payable under subsections (1), (4) and (5) of this section shall—

- (a) be recoverable as civil debts summarily; and
- (b) in total, not exceed the value of the assets found to be reportable and deliverable.

51. The Unclaimed Financial Assets Act, 2011 is amended by inserting the following new sections immediately after section 33—Insertion of a
new sections in
No. 40 of 2011.

Waiver of penalties,
fines and audit fees.

33A. The Authority may, with the approval of the Cabinet Secretary waive payment of any of the penalties and fines under section 33, whether in part or in full, where—

- (a) the waiver is intended to facilitate the holder of the asset to disclose and deliver the undeclared asset to the Authority;
- (b) in the opinion of the Authority, there is justifiable reasons to do so; or
- (c) it is in the public interest to do so.

Voluntary
Unclaimed
Financial Assets
Disclosure
Programme.

33B.(1) There is established a programme to be known as the Voluntary Unclaimed Financial Assets Disclosure Programme which shall be for a period of twelve months from the date of the commencement of this section.

(2) The object and purpose of the programme established by subsection (1) shall be to grant relief of the penalties and interest in unclaimed assets where the holder discloses, reports or delivers the assets to the Authority in accordance with this section.

(3) A holder of unclaimed assets may disclose, report and deliver the assets to the Authority for the purpose of being granted relief on penalties and interest on such assets.

(4) This section shall apply to assets held up to the thirtieth day of June 2022.

(5) A holder who discloses, reports and delivers the unclaimed financial assets within twelve months from the date of commencement of this section shall not be liable to the penalties or interest payable under sections 33(1), (4) and (5).

52. Section 21 of the Statutory Instruments Act, 2013 is amended by inserting the following new subsection immediately after subsection (3) —

Amendment of section 21 of No. 23 of 2013.

(4) This section shall not apply to statutory instruments issued under the Income Tax Act, Stamp Duty Act, Value Added Tax Act, 2013, Tax Appeals Tribunal Act, 2013, Excise Duty Act 2015, and Tax Procedures Act, 2015.

Cap. 470.
Cap. 480.
No. 35 of 2013.
No. 40 of 2013.
No. 23 of 2015.
No. 29 of 2015.

53. Section 13 of the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015 is amended—

Amendment of section 13 of No. 8 of 2015.

(a) by deleting subsection (1) and substituting therefor the following new subsection —

(1) The benefits granted to an entitled person, or his or her surviving spouse, as the case may be, under this Act, shall be administered—

(a) in the case of a retired Deputy President, retired Prime Minister or retired Vice-President, by the Office of the President, and shall be provided for in the estimates

of the national government referred to in Article 221(1) of the Constitution;

(b) in the case of a retired Speaker of the National Assembly or the Senate, by the Parliamentary Service Commission, and shall be provided for in the estimates of the parliamentary service prepared pursuant to Article 127(6)(c) of the Constitution; and

(c) in the case of a retired Chief Justice or retired Deputy Chief Justice, by the Judicial Service Commission, and shall be provided for in the estimates of the Judiciary prepared pursuant to Article 173(3) of the Constitution.

(b) by inserting the following new subsections immediately after subsection (1) —

(1A) For purposes of this section, “benefits” means the benefits granted to an entitled person under the First Schedule, Second Schedule or the Third Schedule to this Act.

(1B) For the avoidance of doubt, subsection (1) shall not apply to the pension, lump sum payment upon retirement, and gratuity provided for in this Act.

(1C) The respective entities under subsection (1), shall formulate administrative guidelines for the administration of this section including on matters relating to the computation of benefits due to an entitled person under this section.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the objects and reasons of the Bill

This Bill has been submitted by the Cabinet Secretary for the National Treasury and Planning and formulates the proposals announced in the Budget for 2022/2023 relating to liability to, and collection of taxes, and for matters incidental thereto.

The Bill also seeks to amend the following laws—

The Evidence Act (Cap. 80)

The Bill proposes to amend section 133 of the Evidence Act to accommodate all officers involved in administering tax laws as set out in the First Schedule of the Kenya Revenue Act.

The Capital Markets Act (Cap. 485A)

The Bill seeks to amend the Capital Markets Act to address the shortage of investment advisory services being experienced across the country, due to the restrictive nature of the Act, by expanding the spectrum of persons who may act as investment advisors in offering the much-needed investment advisory services.

The Insurance Act (Cap. 487)

The Bill proposes to amend section 10(4) and (8) of the Insurance Act to align the section with section 21A of the Act.

The Unclaimed Financial Assets Act (No. 40 of 2011)

The Bill seeks to amend the Unclaimed Assets Act, 2011, to introduce capping penalties and interest to the value of asset found to be reportable and deliverable. This is meant to address the cases where the asset may increase beyond the value of the asset thus discouraging compliance to avoid penalties.

The Statutory Instruments Act (No. 23 of 2013)

The Bill proposes to amend the Statutory Instruments Act, 2013, to provide for the exemption of statutory instruments legislated under various tax laws from automatic expiry as provided in section 21 of the Act.

The Retirement Benefits (Deputy President and Designated State Officers) Act (No. 8 of 2015)

The Bill proposes to amend the Retirement Benefits (Deputy President and Designated State Officers) Act, 2015, to provide for the administration of the benefits payable to entitled persons under the Act by the respective entities.

Statement on delegation of legislative powers and limitation of fundamental rights and freedoms.

The Bill does not delegate legislative power and neither does it limit fundamental rights and freedoms.

Statement that the Bill concerns county governments.

The Bill does not contain provisions that affect the functions and powers of county governments in terms of Article 110(1)(a) of the Constitution and hence it is not a Bill concerning county governments.

Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution.

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 8th April, 2022.

GLADYS WANGA,
*Chairperson, Departmental Committee
on Finance and National Planning.*

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

Interpretation

In this Act, unless the context otherwise requires—

“accounting period”, in relation to a person, means the period for which that person makes up the accounts of his business;

“actuary” means—

- (a) a Fellow of the Institute of Actuaries in England; or of the Faculty of Actuaries in Scotland; or of the Society of Actuaries in the United States of America; or of the Canadian Institute of Actuaries; or
- (b) such other person having actuarial knowledge as the Commissioner of Insurance may approve;

“agency fees” means payments made to a person for acting on behalf of any other person or group of persons, or on behalf of the Government and excludes any payments made by an agent on behalf of a principal when such payments are recoverable;

“annuity contract” means a contract providing for the payment to an individual of a life annuity, and

“assessment” means an assessment, instalment assessment, self-assessment, or additional assessment made under this Act;

“authorized tax agent” means any person who prepares or advises for remuneration, or who employs one or more persons to prepare for remuneration, any return, statement or other document, with respect to a tax under this Act; and for the purposes of this Act, the preparation of a substantial portion of a return, statement or other document shall be deemed to be the preparation of the return, statement or other document;

“bank” means a bank or financial institution licensed under the Banking Act (Cap. 488);

“bearer” means the person in possession of a bearer instrument; and

“bearer instrument” includes a certificate of deposit, bond, note or any similar instrument payable to the bearer;

“building society” means a building society registered under the Building Societies Act (Cap. 489);

“business” includes any trade, profession or vocation, and every manufacture, adventure and concern in the nature of trade, but does not include employment;

“child relief” *deleted by Act No. 12 of 1977, s. 5;*

“collective investment scheme” has the meaning assigned to it in section 2 of the Capital Markets Act (Cap. 485A);

“commercial vehicle” means a road vehicle which the Commissioner is satisfied is—

- (a) manufactured for the carriage of goods and so used in connection with a trade or business; or
- (b) a motor omnibus within the meaning of that term in the Traffic Act (Cap. 403); or
- (c) used for the carriage of members of the public for hire or reward

“Commissioner” means—

- (a) the Commissioner-General appointed under section 11(1) of the Kenya Revenue Authority Act (Cap. 469); or
- (b) with respect to powers or functions that have been delegated under section 11(4) of the Kenya Revenue Authority Act (Cap. 469) to another Commissioner, that other Commissioner;

“company” means a company incorporated or registered under any law in force in Kenya or elsewhere;

“compensating ta” means the addition to tax imposed under section 7A;

“consultancy fees” means payments made to any person for acting in an advisory capacity or providing services on a consultancy basis;

“contract of service” means an agreement, whether oral or in writing, whether expressed or implied, to employ or to serve as an employee for any period of time, and includes a contract of apprenticeship or indentured learnership, under which the employer has the power of selection and dismissal of the employee, pays his wages or salary and exercises general or specific control over the work done by him; and for the purpose of this definition an officer in the public service shall be deemed to be employed under a contract of service;

“contractual payments” *deleted by Act No. 6 of 2001, s. 42;*

“control”, in relation to a person, means—

- (a) that the person, directly or indirectly, holds at least twenty per cent of the voting rights in a company;
- (b) a loan advanced by the person to another person constitutes at least seventy per cent of the book value of the total assets of the

other person excluding a loan from a financial institution that is not associated with the person advancing the loan;

- (c) a guarantee by the person for any form of indebtedness of another person constitutes at least seventy per cent of the total indebtedness of the other person excluding a guarantee from a financial institution that is not associated with the guarantor;
- (d) the person appoints more than half of the board of directors of another person or at least one director or executive member of the governing board of that person;
- (e) the person is the owner of or has the exclusive rights over the know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of a similar nature, on which another person is wholly dependent for the manufacture or processing of goods or articles or business carried on by the other person;
- (f) the person or a person designated by that person—
- (i) supplies at least ninety per cent of the supply of the purchases of another person; and
- (ii) upon assessment, the Commissioner deems influence in the price or other conditions relating to the supply of the purchases of another person;
- (g) the person purchases or designates a person—
- (i) to purchase at least ninety per cent of the sales of another person; and
- (ii) upon assessment, the Commissioner deems influences in the price or any other conditions of the sales of another person;
- (h) the person has any other relationship, dealing or practice with another person which the Commissioner may deem to constitute control;

“corporation rate” means the corporation rate of tax specified in paragraph 2 of Head B of the Third Schedule;

“Court” means the High Court;

“current year of income”, in relation to income charged to instalment tax, means the year of income for which the instalment tax is payable;

“debenture” includes any debenture stock, mortgage, mortgage stock, or any similar instrument acknowledging indebtedness, secured on the assets of the person issuing the debenture; and, for the purposes of

paragraphs (d) and (e) of section 7(1) of this Act, includes any loan or loan stock, whether secured or unsecured;

“deemed interest” means an amount of interest equal to the average ninety-one day Treasury Bill rate, deemed to be payable by a resident person in respect of any outstanding loan provided or secured by the non-resident, where such loan is provided free of interest;

“defined benefit provision”, in respect of a registered fund, means the terms of the fund under which benefits in respect of each member of the fund are determined in any way other than that described in the definition of a “defined contribution provision”;

“defined benefit registered fund” means a registered fund that contains a defined benefit provision, whether or not it also contains a defined contribution provision;

“defined contribution provision”, in respect of a registered fund, means terms of the fund—

- (a) which provide for a separate account to be maintained in respect of each member, to which are credited contributions made to the fund by, or in respect of, the member and any other amounts allocated to the member, and to which are charged payments in respect of the member; and
- (b) under which the only benefits in respect of a member are benefits determined solely with reference to, and provided by, the amount of the member’s account;

“defined contribution registered fund” means a registered fund under which the benefits of a member are determined by a defined contribution provision, and does not contain a defined benefit provision;

“demurrage charges” deleted by Act No. 23 of 2019, s. 2.;

“director” means—

- (a) in relation to a body corporate the affairs of which are managed by a board of directors or similar body, a member of that board or similar body;
- (b) in relation to a body corporate the affairs of which are managed by a single director or similar person, that director or person;
- (c) in relation to a body corporate the affairs of which are managed by the members themselves, a member of the body corporate,

and includes any person in accordance with whose directions and instructions such persons are accustomed to act;

“discount” means interest measured by the difference between the amount received on the sale, final satisfaction or redemption of any debt, bond, loan, claim, obligation or other evidence of indebtedness, and the price paid on purchase or original issuance of the bond or evidence of indebtedness or the sum originally loaned upon the creation of the loan, claim or other obligation;

“dividend” means any distribution (whether in cash or property, and whether made before or during a winding up) by a company to its shareholders with respect to their equity interest in the company, other than distributions made in complete liquidation of the company of capital which was originally paid directly into the company in connection with the issuance of equity interests;

“due date” means the date on or before which any tax is due and payable under this Act or pursuant to any notice issued under this Act;

“employer” includes any resident person responsible for the payment of, or on account of, any emoluments to any employee, and any agent, manager or other representative so responsible in Kenya on behalf of any non-resident employer;

“export processing zone enterprise” has the meaning assigned to it by the Export Processing Zones Act, (No. 12 of 1990);

“family relief” deleted by Act No. 8 of 1996, s. 27;

“foreign tax”, in relation to income charged to tax in Kenya, means any income tax or any tax of a similar nature charged under any law in force in any place with the Government of which a special arrangement has been made by the Government of Kenya and which is the subject of that arrangement;

“incapacitated person” means a minor, and any person adjudged under any law, whether in Kenya or elsewhere, to be in a state of unsoundness of mind (however described);

“individual” means a natural person;

“individual rates” means the individual rates of income tax specified in paragraph 1 of Head B of the Third Schedule;

“individual retirement fund” means a fund held in trust by a qualified institution for a resident individual for the purpose of receiving and investing funds in qualifying assets in order to provide pension benefits for such an individual or the surviving dependants of such an individual subject to the Income Tax (Retirement Benefit) Rules and “registered

individual retirement fund” means an individual retirement fund where the trust deed for such a fund has been registered with the Commissioner;

“infrastructure bond” means a bond issued by the Government for the financing of a strategic public infrastructure facility including a road, hospital, port, sporting facility, water and sewerage system, a communication network or energy project;

“information technology” means any equipment or software for use in storing, retrieving, processing or dissemination information;

“insurance relief” deleted by Act No. 8 of 1996, s. 27;

“interstate tax” means any income tax or any tax of a similar nature changed under any law in force in Kenya;

“interest” (other than interest charged on tax) means interest payable in any manner in respect of a loan, deposit, debt, claim or other right or obligation, and includes any premium or discount by way of interest and any commitment or service fee paid in respect of any loan or credit or an Islamic finance return;

“investee company” has the meaning assigned to it under the Capital Markets Act (Cap. 485A) and the regulations made thereunder;

“Islamic finance arrangement” means all financial arrangements, including transactions, instruments, products or related activities that are structured in accordance with Islamic law;

“Islamic finance return” means any amount received or paid in relation to Sukuk or an Islamic finance arrangement;

“Kenya” includes the continental shelf and any installation thereon as defined in the Continental Shelf Act (Cap. 312);

“local committee” means a local committee established under section 82 of this Act;

“loss”, in relation to gains or profits, means a loss computed in the same manner as gains or profits;

“Management Act” means the East African Income Tax Management Act (E.A. Cap. 24);

“management or professional fee” means any payment made to any person, other than a payment made to an employee by his employer, as consideration for any managerial, technical, agency, contractual, professional or consultancy services however calculated;

“married relief” deleted by Act No. 12 of 1977, s. 5;

“Minister” means the Cabinet Secretary for the time being responsible for matters relating to finance;

“National Social Security Fund” means the National Social Security Fund established under section 3 of the National Social Security Fund Act (Cap. 258);

“natural resource income” means—

- (i) an amount including a premium or such other like amount paid as consideration for the right to take minerals or a living or non-living resource from land or sea; or
- (ii) an amount calculated in whole or in part by reference to the quantity or value of minerals or a living or non-living resource taken from land or sea;

“non-resident rate” means a non-resident tax rate specified in paragraph 3 of Head B of the Third Schedule;

“notice of objection” means a valid notice of objection to an assessment given under section 84(1);

“number of full-year members”, in respect of a registered fund, means the sum of the periods of service in the year under the fund of all members of the fund, where the periods are expressed as fractions of a year;

“oil company”, deleted by Act No. 16 of 2014, s. 2;

“officer” means the Commissioner and any other member of staff of the Kenya Revenue Authority appointed under section 13 of the Kenya Revenue Authority Act (Cap. 469);

“original issue discount” means the difference between the amount received on the final satisfaction or redemption of any debt, bond, loan, claim, obligation or other evidence of indebtedness, and the price paid on original issuance of the bond or evidence of indebtedness or the sum originally loaned upon creation of the obligation, loan, claim or other obligation;

“paid” includes distributed, credited, dealt with or deemed to have been paid in the interest or on behalf of a person and “pay”, “payment” and “payable” have corresponding meanings;

“pension fund” means any fund for the payment of pensions or other similar benefits to employees on retirement, or to the dependants of employees on the death of such employees and “registered pension fund” means one which has been registered with the Commissioner in such manner as may be prescribed;

“pensionable income” means—

- (a) in relation to a member of a registered pension or provident fund or of an individual eligible to contribute to a registered individual retirement fund, the employment income specified in section 3(2)(a)(ii) subjected to deduction of tax under section 37;
- (b) in the case of an individual eligible to contribute to a registered individual retirement fund, the gains or profits from business subject to tax under section 3(2)(a)(i) earned as the sole proprietor or as a partner of the business:

Provided that where a loss from business is realized the loss shall be deemed to be zero;

“permanent establishment” includes—

- (a) a fixed place of business through which business is wholly or partly carried on and includes a place of management, a branch, an office, a factory, a workshop, a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources, a warehouse in relation to a person whose business is providing storage facilities to others, a farm, plantation or other place where agricultural, forestry plantation or related activities are carried on and a sales outlet;
- (b) a building site, construction, assembly or installation project or any supervisory activity connected to the site or project, but only if it continues for a period of more than one hundred and eighty-three days:

Provided that for the purpose of determining whether the period specified in this paragraph has been exceeded—

- (i) where a person carries on activities at a place that constitutes a building site or construction or installation project and these activities are carried on during one or more periods of time that, in the aggregate, exceed thirty days but do not exceed one hundred and eighty-three days; and
- (ii) connected activities are carried on at the same building site or construction or installation project during different periods of time, each exceeding thirty days, by one or more enterprises closely related to the first-mentioned enterprise, the different periods of time shall be added to the aggregate period of time during which the first-mentioned enterprise has carried on

activities at that building site or construction or installation project;

- (c) the provision of services, including consultancy services, by a person through employees or other personnel engaged for that purpose, but only where the services or connected business in Kenya, continue for a period of, or periods exceeding in the aggregate, ninety-one days in any twelve-month period commencing or ending in the year of income concerned;
- (d) an installation or structure used in the exploration for natural resources:

Provided that the exploration continues for a period of not less than ninety-one days—

- (e) a dependent agent of a person who acts on their behalf in respect of any activities which that person undertakes in Kenya including habitually concluding contracts, or playing the principal role leading to the conclusion of contracts that are routinely concluded without material modification by the person, but excludes the following activities where the activities are of a preparatory or auxiliary character—
 - (i) the use of facilities solely for the purpose of storage, or display of goods or merchandise belonging to the enterprise;
 - (ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, or display;
 - (iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
 - (v) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity; and
 - (vi) the maintenance of a fixed place of business solely for any combination of activities mentioned in paragraphs (i) to (v).

“permanent or semi-permanent crops” means such crops which the Minister may, by notice in the Gazette, declare to be permanent or semi-permanent crops for the purposes of this Act;

“personal relief” means—

- (a) the personal relief provided for under Part V; and
- (b) the relief mentioned in section 30;

“preceding year assessment”, in relation to instalment tax, means the tax assessed for the preceding year of income as of the date the instalment tax is due without regard to subsequent additions to, amendments of, or subtractions from the assessment and in the event that as of the date the instalment tax is due no assessment for the preceding year of tax has, as yet, been made, means the amount of tax estimated by the person as assessable for the preceding year of income;

“premises” means land, any improvement thereon, and any building or, where part of a building is occupied as a separate dwelling-house, that part;

“provident fund” includes any fund or scheme for the payment of lump sums and other similar benefits, to employees when they leave employment or to the dependants of employees on the death of those employees but does not include any national provident fund or national social security fund established by the Government and “registered provident fund” means one which has been registered with the Commissioner in such manner as may be prescribed;

“provisional return of income” deleted by Act No. 16 of 2014, s. 2;

“public pension scheme” means a pension scheme that pays pension or lump sums out of the Consolidated Fund;

“qualified institution” means a bank licensed under the Banking Act (Cap. 488), or an insurer registered under the Insurance Act (Cap. 487), or such other financial institution as may be approved under the Retirement Benefits Act, (No. 3 of 1997);

“qualifying assets”, in respect of a registered individual retirement fund, means time deposits, treasury bills, treasury bonds, securities traded on any securities exchange approved under the Capital Markets Act (Cap. 485A) and such other categories of assets as may be prescribed in the investment guidelines issued under the Retirement Benefits Act, (No. 3 of 1997);

“qualifying dividend” means that part of the aggregate dividend that is chargeable to tax under section 3(2)(b) and which has not been

otherwise exempted under any other provision of this Act, but shall not include a dividend paid by a designated cooperative society subject to tax under section 19A(2) or 19A(3);

“qualifying dividend rate of tax” means the resident withholding tax rate in respect of a qualifying dividend specified in the Third Schedule;

“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.

“qualifying interest rate of tax” means the resident withholding tax rate in respect of interest specified in paragraph 5 of the Third Schedule;

“real estate investment trust” shall have the meaning assigned to it in the Capital Markets Act (Cap. 485A);

“registered annuity contract” means one which has been registered with the Commissioner in such manner as may be prescribed;

“registered fund” means a registered pension fund or a registered provident fund;

“registered home ownership savings plan” means a savings plan established by an approved institution and registered with the Commissioner for receiving and holding funds in trust for depositors for the purpose of enabling individual depositors to purchase a permanent house;

“registered trust scheme” means a trust scheme for the provision of retirement annuities which has been registered with the Commissioner in such manner as may be prescribed;

“registered unit trust” means a unit trust registered by the Commissioner in such manner as may be prescribed;

“registered venture capital company” means a venture capital company registered by the Commissioner in such manner as may be prescribed;

“resident”, when applied in relation—

(a) to an individual, means—

- (i) that he has a permanent home in Kenya and was present in Kenya for any period in any particular year of income under consideration; or
- (ii) that he has no permanent home in Kenya but—
 - (A) was present in Kenya for a period or periods amounting in the aggregate to 183 days or more in that year of income; or
 - (B) was present in Kenya in that year of income and in each of the two preceding years of income for periods averaging more than 122 days in each year of income;
- (b) to a body of persons, means—
 - (i) that the body is a company incorporated under a law of Kenya; or
 - (ii) that the management and control of the affairs of the body was exercised in Kenya in a particular year of income under consideration; or
 - (iii) that the body has been declared by the Minister, by notice in the *Gazette*, to be resident in Kenya for any year of income;

“resident withholding rate” means a rate of resident withholding tax specified in paragraph 5 of Head B of the Third Schedule;

“retirement annuity” means a retirement annuity payable under a registered annuity contract;

“Retirement Benefits Authority” means the Authority by that name established under the Retirement Benefits Act, (No. 3 of 1997);

“return of income” means a return of income furnished by a person consequent upon a notice served by the Commissioner under section 52 of this Act including a return of income together with a self-assessment of tax furnished to the Commissioner in accordance with the provisions of section 52B, together with any documents required to be furnished therewith;

“royalty” means a payment made as a consideration for the use of or the right to use—

- (a) any copyright of a literary, artistic or scientific work; or
- (b) any cinematograph film, including film or tape for radio or television broadcasting; or

- (c) any patent, trade mark, design or model, plan, formula or process; or
- (d) any industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific equipment or experience, and any gains derived from the sale or exchange of any right or property giving rise to that royalty;

“securities exchange” has the meaning assigned to it in section 2 of the Capital Markets Authority Act (Cap. 485A);

“single relief” deleted by Act No. 8 of 1996, s. 27;

“special arrangement” means an arrangement for relief from double taxation having effect under section 41 of this Act or an agreement for the exchange of tax information under section 41A;

“special single relief” deleted by Act No. 8 of 1991, s. 52;

“specified mineral” deleted by Act No. 16 of 2014, s. 2;

“Sukuk” has the meaning assigned to it in the Public Finance Management Act, 2012 (No. 18 of 2012);

“tax” means the income tax charged under this Act;

“tax computerized system” means any software or hardware for use in storing, retrieving, processing or disseminating information relating to tax;

“telecommunication operator” means any person licensed as such under the Kenya Information and Communications Act, (No. 2 of 1998);

“total income” means, in relation to a person, the aggregate amount of his income, other than income exempt from tax under Part III, chargeable to tax under Part II, as ascertained under Part IV;

“trade association” means a body of persons which is an association of persons separately engaged in any business with the main object of safeguarding or promoting the business interests of those persons;

“training fee” means a payment made in respect of a business or user training services designed to improve the work practices and efficiency of an organization, and includes any payment in respect of incidental costs associated with the provision of such services;

Provided that training fee shall not include fees paid for educational services 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.

“Tribunal” means the tribunal established under section 83;

“unit holder”, in relation to a unit trust, means the owner of an interest in the moneys, investments and other property which are for the time being subject to the trusts governing the unit trust, such interest being expressed in the number of units of which he is the owner;

“unit trust” has the meaning assigned to it in section 2 of the Capital Markets Act (Cap. 485A);

“venture company” means a company incorporated in Kenya in which a venture capital company has invested and which at the time of first investment by the venture capital company has assets with a market value or annual turnover of less than five hundred million Kenya shillings;

“whole time service director” means a director of a company who is required to devote substantially the whole of his time to the service of such company in a managerial or technical capacity and is not the beneficial owner of, or able, either directly or through the medium of other companies or by any other means, to control more than five per cent of the share capital or voting power of such company;

“wife’s employment income” means gains or profits from employment arising from a contract of service which is chargeable to tax under section 3(2)(a)(ii) and pensions, lump sums and withdrawals from a registered fund, public pension scheme or registered individual retirement fund which are chargeable to tax under section 3(2)(c), of a woman living with her husband, excepting income derived by her as a trustee or manager of a settlement created by her husband the income of which is deemed under section 25 or 26 to be the income of the settler or income derived by her as an employee of—

- (a) a partnership in which her husband is a partner;
- (b) her husband; or
- (c) a company, the voting power of which is held to the extent of twelve and one-half per cent or more at any time during the year of income by her or by her husband or by both jointly, either directly or through nominees;

“wife’s professional income” means the gains or profits of a married woman living with her husband derived from the exercise by her (but not as a partner of a partnership in which her husband is a partner) of one of

the professions specified in the Fifth Schedule being also a person who has the qualifications specified in that Schedule relevant to that profession;

“wife’s professional income rate” means the wife’s professional income rate specified in paragraph 1A of Head B of the Third Schedule;

“wife’s self-employment income” means gains or profits arising from a business of a married woman living with her husband which are chargeable to tax under section 3(2)(a)(i) and any income chargeable under section 3(2)(a)(iii) or section 3(2)(b), but does not include any income derived from the provision of goods or services by her to a business, partnership or a company owned by or the voting power of which is held to the extent of twelve and one-half per cent, or more at any one time during the year of income by her or her husband either directly or through nominee;

“wife’s self-employment income rate” means the wife’s self-employment income rate specified in paragraph 1A of Head B of the Third Schedule;

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

“year of income” means the period of twelve months commencing on 1st January in any year and ending on 31st December in that year.

(1A) Where under the provisions of this Act, any accounts, books of accounts or other records are required to be kept, such accounts, books or other records may be kept in written form or on micro-film, magnetic tape or any other form of mechanical or electronic data retrieval mechanism.

(2) In relation to any year of income in respect of which an order relating to tax or personal reliefs has been made under the Provisional Collection of Taxes and Duties Act (Cap. 415), reference in this Act to rates of tax and personal reliefs shall, so long as the order remains in force, be construed as references to the rates or reliefs specified in that order; and if, after the order has ceased to have effect, the rates of tax and of personal reliefs in relation to that year of income as specified in this Act as amended are different from those referred to in the order, and assessments have already been made having regard to those rates in the order, then all necessary adjustments shall be made to the assessments to give effect to the rates of tax and of personal reliefs for that year of income as specified in this Act as amended for that year of income.

Section 3 of Cap. 470 which it is proposed to amend—

Charge of tax

3(1) Subject to, and in accordance with, this Act, a tax to be known as income tax shall be charged for each year of income upon all the

income of a person, whether resident or non-resident, which accrued in or was derived from Kenya.

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

(a) gains or profits from—

- (i) any business, for whatever period of time carried on;
- (ii) any employment or services rendered;
- (iii) any right granted to any other person for use or occupation of property;

(b) dividends or interest;

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

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

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

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

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

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

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

(h) a natural resource income.

(2A). The Cabinet Secretary shall make regulations to provide for the mechanisms of implementing the provisions of subsection (2)(ca).

(3) For the purposes of this section—

(a) “person” does not include a partnership;

(b) a bonus or interest paid by a designated cooperative society, as defined under section 19A, shall be deemed to be a dividend—

(ba) “digital marketplace” means an online or electronic platform which enables users to sell or provide services, goods or other property to other users.

(c) for the purposes of subsection (2)(g) and section 15(5A) —

- (i) “immovable property” means a mining right, an interest in a petroleum agreement, mining information or petroleum information;
- (ii) “net gain” in relation to the disposal of an interest in a person, means the consideration for the disposal reduced by the cost of the interest; and
- (iii) the terms “consideration”, “cost”, “disposal”, “interest in a person”, “mining information”, “mining right”, “person”, “petroleum agreement”, and “petroleum information” have the meaning assigned to them in the Ninth Schedule.

Section 4A of Cap. 470 which it is proposed to amend—

4A. Income from businesses where foreign exchange loss or gain is realized

(1) A foreign exchange gain or loss realized on or after the 1st January, 1989 in a business carried on in Kenya shall be taken into account as a trading receipt or deductible expenses in computing the gains and profits of that business for the year of income in which that gain or loss was realized:

Provided that—

- (i) no foreign exchange gain or loss shall be taken into account to the extent that taking that foreign exchange gain or loss into account would duplicate the amounts of gain or loss accrued in any prior year of income; and
- (ii) the foreign exchange loss shall be deferred (and not taken into account)—
 - (a) where the foreign exchange loss is realized by a company with respect to a loan from a person who, alone or together with four or fewer other persons, is in control of that company and the highest amount of all loans by that company outstanding at any time during the year of income is more than three times the sum of the revenue reserves retained earnings and the issued and paid up capital of all classes of shares of the company; or

- (b) to the extent of any foreign exchange gain that would be realized if all foreign currency assets and liabilities of the business were disposed of or satisfied on the last day of the year of income and any foreign exchange loss so deferred shall be deemed realized in the next succeeding year of income.

(1A) For the avoidance of doubt accumulated losses shall be taken into account in computing the amount of revenue reserves.

(2) The amount of foreign exchange gain or loss shall be calculated in accordance with the difference between (a times r1) and (a times r2) where—

a is the amount of foreign currency received, paid or otherwise computed with respect to a foreign currency asset or liability in the transaction in which the foreign exchange gain or loss is realized;

r1 is the applicable rate of exchange for that foreign currency (“a”) at the date of the transaction in which the foreign exchange gain or loss is realized;

r2 is the applicable rate of exchange for that foreign currency (“a”) at the date on which the foreign currency asset or liability was obtained or established or on the 30th December, 1988, whichever date is the later.

(3) For the purposes of this section, no foreign exchange loss shall be deemed to be realized where a foreign currency asset or liability is disposed of or satisfied and within a period of sixty days a substantially similar foreign currency asset or liability is obtained or established.

(4) For the purposes of this section—

“control” deleted by Act No. 8 of 2021, s. 4.;

“company” does not include a bank or a financial institution licensed under the Banking Act (Cap. 488);

“all loans” shall have the meaning assigned in section 16(3);

“foreign currency asset or liability” means an asset or liability denominated in, or the amount of which is otherwise determined by reference to, a currency other than the Kenya Shilling.

Section 5 of Cap. 470 which it is proposed to amend—

Income from employment, etc.

5. (1) For the purposes of section 3(2)(a)(ii) of this Act, an amount paid to—

- (a) a person who is, or was at the time of the employment or when the services were rendered, a resident person in respect of any employment or services rendered by him in Kenya or outside Kenya; or
- (c) a non-resident person in respect of any employment with or services rendered to an employer who is resident in Kenya or the permanent establishment in Kenya of an employer who is not so resident,

shall be deemed to have accrued in or to have been derived from Kenya.

(2) For the purposes of section 3(2)(a)(ii) “gains or profits” includes—

- (a) any wages, salary, leave pay, sick pay, payment in lieu of leave, fees, commission, bonus, gratuity, or subsistence, travelling, entertainment or other allowance received in respect of employment or services rendered, and any amount so received in respect of employment or services rendered in a year of income other than the year of income in which it is received shall be deemed to be income in respect of that other year of income:

Provided that—

- (i) where any such amount is received in respect of a year of income which expired earlier than four years prior to the year of income in which it was received, or prior to the year of income in which the employment or services ceased, if earlier, it shall be deemed to be income of the year of income which expired five years prior to the year of income in which it was received, or prior to the year of income in which the employment or services ceased as the case may be; and
- (ii) where the Commissioner is satisfied that subsistence, travelling, entertainment or other allowance represents solely the reimbursement to the recipient of an amount expended by him wholly and exclusively in the production of his income from the employment or services rendered then the calculation of the gains or profits of the recipient shall exclude that allowance or expenditure; and
- (iii) notwithstanding the provisions of subparagraph (ii), where such amount is received by an employee as

payment of subsistence, travelling, entertainment or other allowance, in respect of a period spent outside his usual place of work while on official duties, the first two thousand shillings per day expended by him for the duration of that period shall be deemed to be reimbursement of the amount so expended and shall be excluded in the calculation of his gains or profits;

- (b) save as otherwise expressly provided in this section, the value of a benefit, advantage, or facility of whatsoever nature the aggregate value whereof is not less than thirty-six thousand shillings granted in respect of employment or services rendered;
- (c) an amount paid by the employer as a contribution to a pension fund, or a registered provident fund or scheme:

Provided that—

- (i) where the contract is for a specified term, any amount received as compensation on the termination of the contract shall be deemed to have accrued evenly over the unexpired period of the contract;
 - (ii) where the contract is for an unspecified term and provides for compensation on the termination thereof, the compensation shall be deemed to have accrued in the period immediately following the termination at a rate equal to the rate per annum of the gains or profits from the contract received immediately prior to termination;
 - (iii) where the contract is for an unspecified term and does not provide for compensation on the termination thereof, any compensation paid on the termination of the contract shall be deemed to have accrued evenly in the three years immediately following such termination;
- (d) any balancing charge under Part II of the Second Schedule;
 - (e) the value of premises provided by an employer for occupation by his employee for residential purposes;
 - (f) an amount paid by an employer as a premium for an insurance on the life of his employee and for the benefit of that employee or any of his dependants:

Provided that this paragraph shall not apply where such an amount is paid—

- (i) to a registered or unregistered pension scheme, pension fund, or individual retirement fund; or
- (ii) for group life policy cover, unless such a cover confers a benefit to the employee or any of his dependants.

(g) deleted by Act No. 6 of 1994, s. 34.

(2A) (a) Where an individual is a director or an employee or is a relative of a director or an employee and has received a loan including a loan from an unregistered pension or provident fund by virtue of his position as a director or his employment, or the person to whom he is related, he shall be deemed to have received a benefit in that year of income equal to the greater of—

Provided that where the term of the loan extends for a period beyond the date of termination of employment, the provisions of this subsection shall continue to apply for as long as the loan remains unpaid.

(b) For the purposes of this subsection—

“market lending rates” means the average 91-day treasury bill rate of interest for the previous quarter;

“prescribed rate of interest” means the following:

- (i) in the year of income commencing on the 1st January, 1990, 6 per cent;
- (ii) in the year of income commencing on the 1st January, 1991, 8 per cent;
- (iii) in the year of income commencing on the 1st January, 1992, 10 per cent;
- (iv) in the year of income commencing on the 1st January, 1993, 12 per cent;
- (v) in the year of income commencing on the 1st January, 1994, 15 per cent; and
- (vi) in the year of income commencing on or after the 1st January, 1995, 15% or such interest rate based on the market lending rates as the Commissioner may from time to time prescribe, to cover a period of not less than six months but not more than one year,

whichever is the lower.

(2B) Where an employee is provided with a motor vehicle by his employer, he shall be deemed to have received a benefit in that year of income equal to the higher of—

(a) such value as the Commissioner may, from time to time, determine; and

(b) the prescribed rate of benefit:

Provided that—

(i) where such vehicle is hired or leased from a third party, the employee shall be deemed to have received a benefit in that year of income equal to the cost of hiring or leasing; or

(ii) where an employee has restricted use of such motor vehicle, the Commissioner shall, if satisfied of that fact upon proof by the employee, determine a lower rate of benefit depending on the usage of the motor vehicle.

(2C) For the purposes of subsection (2B)—

“prescribed rate of benefit” means the following rates in respect of each month—

(a) in the 1996 year of income, 1% of the initial capital expenditure on the vehicle by the employer;

(b) in the 1997 year of income, 1.5% of the initial capital expenditure on the vehicle by the employer; and

(c) in 1998 and subsequent years of income, 2% of the initial expenditure on the vehicle by the employer.

(3) For the purposes of subsection (2)(e), the value of premises, excluding the value of any furniture or other contents so provided, shall be deemed to be—

(a) in the case of a director of a company, other than a whole time service director, an amount equal to the higher of fifteen per centum of his total income excluding the value of those premises and income which is chargeable under section 3(2)(f), the market rental value and the rent paid by the employer;

(b) in the case of a whole time service director, an amount equal to the higher of fifteen per centum of the gains or profits from his employment, excluding the value of those premises, and income which is chargeable under section 3(2)(f), the market rental value and the rent paid by the employer;

- (c) in the case of an agricultural employee required by the terms of employment to reside on a plantation or farm, an amount equal to ten per centum of the gains or profits from his employment:

Provided that for the purposes of this paragraph—

- (i) “plantation” shall not include a forest or timber plantation; and
(ii) “agricultural employee” shall not include a director other than a whole time service director;

(d) in the case of any other employee, an amount equal to fifteen per centum of the gains or profits from his employment, excluding the value of those premises or the rent paid by the employer if paid under an agreement made at arm’s length with a third party, whichever is the higher:

Provided that—

- (i) where the premises are provided under an agreement with a third party which is not at arm’s length, the value of the premises determined under this subsection shall be the fair market rental value of the premises in that year, or the rent paid by the employer, whichever is the higher; or
(ii) where the premises are owned by the employer, the fair market rental value of the premises in that year.

(4) Notwithstanding anything to the contrary in subsection (2) “gains or profits” do not include—

- (a) the expenditure on passages between Kenya and any place outside Kenya borne by employer:

Provided that this paragraph shall not apply to expenditure other than expenditure on the provision of passages for the benefit of an employee recruited or engaged outside Kenya and who is in Kenya solely for the purpose of serving the employer and is not a citizen of Kenya;

(aa) expenditure on vacation trips to destinations in Kenya paid by the employer on behalf of an employee:

Provided that—

- (i) this paragraph shall cease to apply on the 1st July, 2015;
(ii) the period of vacation shall not exceed seven days; and
(iii) the term “employee” shall include the immediate family members of the employee;

- (b) in the case of a full-time employee or his beneficiaries (which expression includes a whole time service director, or a director who controls more than five per cent of the share capital or voting power of a company) the value of any medical services provided by the employer or medical insurance provided by an insurance provider approved by the Commissioner of Insurance and paid for by the employer on behalf of a full-time employee or his beneficiaries:

Provided that in the case of a director other than a whole time service director, the value of the services shall be subject to such limit as the Minister may, from time to time, prescribe;

- (c) an amount paid by the employer as a contribution to a registered or unregistered pension fund, provident fund, individual retirement fund or scheme:

Provided that this paragraph shall not apply to any contributions paid by an employer who is not a person chargeable to tax—

- (i) to an unregistered pension scheme, unregistered provident fund or unregistered individual retirement fund; or
 - (ii) to a registered pension scheme, a registered provident fund or a registered individual retirement fund in excess of the amount specified in section 22A or 22B;
- (d) educational fees of employee's dependants or relatives disallowed under section 16(2)(a)(iv) which have been taxed in the hands of the employer;
 - (e) fringe benefits subject to tax under section 12B;
 - (f) the value of meals served to employees in a canteen or cafeteria operated or established by the employer or provided by a third party who is a registered taxpayer (whether the meals are supplied in the premises of the employer or the premises of the third party) where the value of the meal does not exceed the sum of forty-eight thousand shillings per year per employee subject to such conditions as the Commissioner may specify;
 - (g) an amount paid by an employer as a gratuity or similar payment in respect of employment or services rendered, which is paid into a registered pension scheme:

Provided that—

- (a) this paragraph shall only apply in respect of amounts not exceeding two hundred and forty thousand shillings for each year of service;

(b) this paragraph shall not apply to any person who is eligible for deductions under section 22A.

(h) For the purposes of this subsection—

(i) “beneficiaries” means the full time employee’s spouse and not more than four children whose age shall not exceed twenty-one years; and

(ii) “low income employee” deleted by Act No. 16 of 2014, s. 5(c).

(5) Notwithstanding any other provision of this Act, the value of the benefit (excluding the value of premises as determined under subsection (3) and the value of benefit determined under subsection (2B) for the purposes of this section, shall be the higher of the cost to the employer or the fair market value of the benefit:

Provided that—

(a) in the case of an employee share ownership plan, the value of the benefit shall be the difference between the market value, per share, and the offer price, per share, at the date the option is granted by the employer; and

(b) the Commissioner may, from time to time, prescribe the value where the cost or the fair market value of a benefit cannot be determined.

(5)— (6) For the purposes of paragraph (a) of the proviso to subsection

(a) the benefits chargeable shall accrue where such plan is registered with the Commissioner as a collective investment scheme within the meaning of the Capital Markets Act (Cap. 485A) and shall be deemed to have accrued to the employee at the end of the vesting period;

(b) “offer price” means the price at which an employer’s shares are initially offered to an employee under an employee share ownership plan;

(c) “market value”, in relation to a share means—

(i) where the shares are fully listed on any securities exchange operating in Kenya, the mid-market value on the date the shares were granted by the employer; or

(ii) where the shares are not fully listed, the price which the shares might reasonably be expected to fetch on sale in the

open market, which shall be agreed upon with the Commissioner before the grant of the options;

- (d) "share option" means the offer made by an employer to an employee to purchase a fixed number of shares at a fixed price, which may be paid for at the end of the vesting period;
- (e) "vesting period" means a fixed period of time between the date of offer by the employer and the date after which the option to purchase can be exercised by the employee.

Section 9 of Cap. 470 which it is proposed to amend—

Income of certain non-resident persons deemed derived from Kenya

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

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

(2) Where a non-resident person carries on, in Kenya, the business of transmitting messages by cable, radio, optical fibre, television broadcasting, Very Small Aperture Terminal (VSAT), internet, satellite or by any other similar method of communication, then the gains or profits from the business shall be the gross amount received for the transmission of messages which are transmitted by the apparatus established in or outside Kenya, whether or not those messages originate from Kenya, and such gains and profits shall be deemed to be income derived from Kenya.

Section 11 of Cap. 470 which it is proposed to amend—

Trust income, etc., deemed income of trustee, beneficiary, etc.

11. (1) Any income chargeable to tax under this Act and received by any person in his capacity as a trustee, executor or administrator, shall be deemed to be income of that trustee, executor or administrator as the case may be.

(2) Where an amount included in the income of the trustee, executor or administrator under subsection (1) consists of qualifying dividends or qualifying interest, that amount shall be deemed to be an amount chargeable to tax under section 3(2)(b) and not section 3(2)(e).

(3) Any amount, received as income in a year of income by any person beneficially entitled thereto from any trustee in his capacity as such, or paid out of income by the trustee on behalf of such person, shall, subject to this Act, be deemed to be income of such, and to the extent that any such amount is received or so paid out of income chargeable to tax under this Act on that trustee it shall be deemed to be income—

(a) in any case other than that of an annuity directed to be paid free of tax—

(i) of such gross amount as would, after deduction of tax at the rate paid or payable on such income by such trustee, be equal to the amount received or so paid; and

(ii) that has borne tax at such rate;

(b) in the case of an annuity directed to be paid free of tax, of such gross amount as is equal to the amount of such annuity together with the amount of the sums paid by the trustee to the annuitant to meet the liability of the annuitant to tax on such annuity.

(3A) In the case of a registered trust, sub-section (3) shall only apply to—

(a) any amount that is paid out of the trust income on behalf of any beneficiary and is used exclusively for the purpose of education, medical treatment or early adulthood housing;

(b) income paid to any beneficiary which is collectively below ten million shillings in the year of income;

(c) such other amount as the Commissioner may prescribe from time to time and at such rate as prescribed in paragraph 5 of the Third Schedule.

(4) The trustee, executor or administrator may designate a part or all of the amounts paid by him to a person that is chargeable to tax under subsection (2) to be qualifying dividends or qualifying interest and, in that case, such designated amount shall be deemed to have been already tax paid.

(5) The cumulative totals, at any time, of the amounts designated up to that time by a trustee under subsection (4) as qualifying dividends or qualifying interest shall not exceed the cumulative totals of qualifying

dividends or qualifying interest respectively, received by the trustee, in his capacity as a trustee, after the 31st December, 1990 and up to that time.

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

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 non-resident person whose income from the provision of services is derived from or accrues in Kenya through a business carried out over the internet or an electronic network including through a digital marketplace.

(2) A person subject to digital service tax 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 month in which the digital service was offered.

(3) Despite subsection (1), digital service tax shall not apply to income chargeable under section 9(2) or section 35.

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

Deductions allowed

15. (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) Deleted by Act No. 8 of 2020, s. 5—
 - (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;
- (i) 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;
- (j) deleted by Act No. 8 of 1997, s. 32;
- (k) 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;
- (l) deleted by Act No. 16 of 2014, s. 7(a);
- (m) 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;

- (n) 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;
- (o) 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;
- (p) deleted by Act No. 13 of 1984, s. 19;
- (q) 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;
- (r) Deleted by Act No. 8 of 2020, s. 5;
- (s) Deleted by Act No. 8 of 2020, s. 5;
- (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) Deleted by Act No. 8 of 2020, s. 5.
- (v) Deleted by Act No. 8 of 2020, s. 5.

- (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 (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) deleted by Act No. 2 of 2020, Sch.

(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 succeeding years 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.

(5) (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.

(6) 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.
- (7) 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.

(8) Deleted by Act No. 10 of 2006, s. 21.

Section 16 of Cap. 470 which it is proposed to amend—

Deductions not allowed

16. (1) Save as otherwise expressly provided, for the purposes of ascertaining the total income of a person for any year of income, no deduction shall be allowed in respect of—

- (a) any expenditure or loss which is not wholly and exclusively incurred by him in the production of the income;
- (b) any capital expenditure, or any loss, diminution or exhaustion of capital.

(2) Notwithstanding any other provision of this Act, no deduction shall be allowed in respect of—

- (a) expenditure incurred by a person in the maintenance of himself, his family or establishment or for any other personal or domestic purpose including the following—
 - (i) entertainment expenses for personal purposes; or

- (ii) hotel, restaurant or catering expenses other than for meals or accommodation expenses incurred on business trips or during training courses or work related conventions or conferences, or meals provided to employees on the employer's premises;
- (iii) vacation trip expenses except those customarily made on home leave as provided in the proviso to section 5(4)(a) and (aa);
- (iv) educational fees of employee's dependants or relatives; or
- (v) club fees including entrance and subscription fees, except as provided in section 15(2)(v);

(b) any expenditure or loss which is recoverable under any insurance, contract, or indemnity;

(c) any income tax or tax of a similar nature paid on income:

Provided that, save in the case of foreign tax in respect of which a claim is made under section 41, a deduction shall be allowed in respect of income tax or tax of a similar nature, including compensation tax paid on income which is charged to tax in a country outside Kenya to the extent to which that tax is payable in respect of and is paid out of income deemed to have accrued in or to have been derived from Kenya;

- (d) any sums contributed to a registered or unregistered pension, saving, or provident scheme or fund, except as provided in section 15(2)(o), or any sum paid to another person as a pension;
- (e) a premium paid under an annuity contract;
- (f) any expenditure incurred in the production of income deemed under section 10 of this Act to have accrued in or to have been derived from Kenya where such expenditure was incurred by a non-resident person not having a permanent establishment within Kenya;

(fa) any expenditure incurred in the production of dividend income deemed under paragraph (a) of subsection (1), of section 7 to have been derived from Kenya where such expenditure was incurred by a non-resident person not having a permanent establishment within Kenya;

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

- (h) any loss incurred in any business which, having regard to the nature of the business, to the principal occupation of the owner, partners, shareholders or other persons having a beneficial interest therein, to the relationship between any such persons or to any other relevant factor, the Commissioner considers it reasonable to regard as not being carried on mainly with a view to the realization of profits; and, without prejudice to the generality of the foregoing, a business shall be deemed not to be carried on for any year of income with a view to the realization of profits where more than one quarter of the amount of the revenue expenditure incurred in such business in such year relates to goods, services, amenities or benefits, or to the production of goods, services, amenities or benefits, which are of a personal or domestic nature enjoyed by the owner, partners, shareholders or other persons having a beneficial interest in the business or a member of the family or the domestic establishment of any such person;
- (i) deleted by Act No. 10 of 2006, s. 22;
- (j) gross interest paid or payable to related persons and third parties in excess of thirty per cent of earnings before interest, taxes, depreciation and amortization of the borrower in any financial year:

Provided that—

- (i) any income which is exempt from tax shall be excluded from the calculation of earnings before interest, taxes, depreciation and amortization; and
- (ii) this paragraph shall apply to—
 - (A) interest on all loans;
 - (B) payments that are economically equivalent to interest; and
 - (C) expenses incurred in connection with raising the finance.
- (iii) this paragraph shall not apply to —
 - (A) banks or financial institutions licensed under the Banking Act; and
 - (B) micro and small enterprises registered under the Micro and Small Enterprises Act, 2012—
 - (ja) an amount of deemed interest where the person is controlled by a non-resident person alone or together with not

more than four other persons and where the company is not a bank or a financial institution licensed under the Banking Act (Cap.488).

(k) deleted by Act No. 8 of 1997, s. 33;

(l) deleted by Act No. 8 of 2009, s. 23.

(3) For the purposes of subsection (2), the expressions—

“all loans” means loans, overdrafts, ordinary trade debts, overdrawn current accounts or any other form of indebtedness for which the company is paying a financial charge, interest, discount or premium;

“deemed interest” deleted by Act No. 38 of 2016, s. 7.

(4) For the avoidance of doubt, the expression "revenue reserves" under subsection (2) includes accumulated losses.

(5) The Commissioner shall prescribe the form and manner in which the deemed interest shall be computed and the period for which it shall be applicable.

Section 18A of Cap 470 which it is proposed to repeal—

Ascertainment of gains or profits of business in a non-preferential tax regime

18A(1) Where a resident entity operating in a preferential tax regime carries on business—

- (a) with a related resident person not operating in a preferential tax regime; and
- (b) the business produces to the resident person not operating in a preferential tax regime either no profits or less than the ordinary profits which would have been expected to accrue from that business if there had been no such relationship, then, the gains or profits of that resident person from that business shall be deemed to be the amount that might have been expected to accrue if the course of that business had been conducted by independent persons dealing at arm's length.

(2) For the purposes of this section, the expression “preferential tax regime”, with respect to an item of income or profit, means any legislation, regulation or administrative practice which provides a preferential rate of taxation to such income or profit, including reductions in the tax rate or the tax base.

*Section 18B of Cap 470 which it is proposed to repeal—***Returns on activities in other jurisdictions**

18B(1) In this section—

“multinational enterprise group” means a group that includes two or more enterprises which are resident in different jurisdictions including an enterprise that carries on business through a permanent establishment or through any other entity in another jurisdiction; and

“ultimate parent entity” means an entity that—

- (a) is resident in Kenya for tax purposes;
- (b) is not controlled by another entity; and
- (c) owns or controls a multinational enterprise group.

(2) An ultimate parent entity of a multinational enterprise group shall submit to the Commissioner a return describing the group's financial activities in Kenya, where its gross turnover exceeds the prescribed threshold, and in all other jurisdictions where the group has taxable presence, not later than twelve months after the last day of the reporting financial year of the group.

(3) The return submitted under subsection (2) shall contain the prescribed information on the group's aggregate information including information relating to the amount of revenue, profit or loss before income tax, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees and tangible assets other than cash or cash equivalents with regard to each jurisdiction in which the group operates.

*Section 31 of Cap 470 which it is proposed to amend—***Insurance relief**

31. (1) A resident individual who proves that in a year of income—

- (a) he has paid a premium for an insurance made by him on his life, or on the life of his wife or of his child and that the insurance secures a capital sum whether or not in conjunction with another benefit, and that the insurance is made with an insurance company lawfully carrying on in Kenya the business of life insurance, and that sums payable under the insurance are payable in Kenya in the lawful currency of Kenya; or
- (b) his employer has paid a premium for that insurance on the life, and for the benefit, of that individual which is charged with tax under this Act on that individual; or

- (c) he, as well as his employer, has paid a premium for the insurance referred to in paragraph (b), shall, for that year of income, be entitled to a personal relief in this Act referred to as the insurance relief—

Provided that—

- (i) no insurance relief shall be granted in respect of that part of a premium for an insurance as secures a benefit which may, at the option of the assured, be withdrawn at any time prior to the determination of the insurance, and in that case the proportion of premiums otherwise eligible for relief, if any, shall be the amount that the Commissioner may determine to be just and reasonable;
- (ii) no relief shall be granted in respect of a premium for an insurance unless the person claiming the relief furnishes evidence as to the nature and conditions of the insurance and such other particulars as may be required by the Commissioner;
- (iii) an education policy with a maturity period of at least ten years shall qualify for relief; and
- (iv) the provisions of this section shall apply only to life or education policies whose term commences on or after 1st January, 2003;
- (v) a health policy whose term commences on or after 1st January, 2007 or a contribution made to the National Hospital Insurance Fund, shall qualify for relief;
- (vi) where a policy is surrendered before its maturity, all the relief granted to the policyholder shall be recovered from the surrender value of the policy and remitted to the Commissioner by the insurer.

(2) In this section “child”, means any child of the resident individual and includes a step-child, an adopted child and an illegitimate child who was under the age of eighteen years on the date the premium was paid.

Section 34 of Cap 470 which it is proposed to amend—

Rates of tax

34. (1) Subject to this section—

- (a) tax upon the total income of an individual, other than that part of the total income comprising wife’s employment income

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

- (m) winnings;
- (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.
- (1A) Deleted by Act No. 16 of 2014, s. 10(b).
- (1B) Deleted by Act No. 16 of 2014, s. 10(b).
- (2) Tax upon the income of a non-resident person not having permanent establishment in Kenya which consists of—
 - (a) a management or professional fee;
 - (b) a royalty or natural resource income;
 - (c) a rent, premium or similar consideration for the use or occupation of property;
 - (d) a dividend;
 - (e) interest;
 - (f) a pension or retirement annuity;
 - (g) any payment in respect of any appearance at, or performance in, any place (whether public or private) for the purpose of entertaining, instructing, taking part in any sporting event or otherwise diverting an audience; or
 - (h) any payment in respect of an activity by way of supporting, assisting or arranging an appearance or performance referred to in paragraph (g) of this subsection;
 - (i) winnings;
 - (j) a payment in respect of gains or profits from the business of transmitting messages which is chargeable to tax under section 9(2);
 - (k) deleted by Act No. 14 of 2015, s. 11(b)(i);
 - (l) deleted by Act No. 23 of 2019, s. 10;
 - (m) insurance or reinsurance premium, except insurance or reinsurance premium paid in respect of aviation insurance; or

- (n) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services), shall be charged at the appropriate non-resident rate in force at the date of payment of such income and shall not be charged to tax under subsection (1).
- (3) Repealed by Act No. 8 of 1978, s. 9.
- (4) In this section "person" does not include a partnership.

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

Deduction of tax from certain income

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;

- (c) a dividend;
- (d) interest and deemed interest;
- (e) a pension or retirement annuity;
- (f) 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) *deleted by Act No. 23 of 2019, s. 12(i);*
- (n) insurance or reinsurance premium, except insurance or reinsurance premium paid in respect of aircraft.
- (o) sales promotion, marketing, advertising services, and transportation of goods (excluding air and shipping transport services).

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

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

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

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

Provided that—

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

- (f) management or professional fee or training fee, the aggregate value of which is twenty-four thousand shillings or more in a month:

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

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

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

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

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

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

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

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

(5A) The Commissioner shall pay the tax deducted from winnings under subsection (1) (i) and (3) (h) into the Sports, Arts and Social Development Fund established under section 24 of the Public Finance Management Act, (No. 18 of 2012).

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

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

- (a) fails to make the deduction or fails to deduct the whole amount of the tax which he should have deducted; or
- (b) fails to remit the amount of any deduction to the Commissioner on or before the twentieth day of the month following the month in which such deduction was made or ought to have been made, any Collector of Stamp Duties appointed under section 4 of the Stamp Duty Act (Cap. 480), shall stamp the instrument of which the property is the subject matter under the Stamp Duty Act, and Registrars of Title or Land Registrars appointed under any written law shall not register the property under any written law, until such tax has been duly accounted for:

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

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

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

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

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

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

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

Section 37 of Cap 470 which it is proposed to amend—

Deductions of tax from emoluments

37. (1) An employer paying emoluments to an employee shall deduct therefrom, and account for tax thereon, to such extent and in such manner as may be prescribed.

(2) If an employer paying emoluments to an employee fails—

- (a) to deduct tax thereon;
- (b) to account for tax deducted thereon; or
- (c) to supply the Commissioner with a certificate provided by rules prescribing the certificate,

the Commissioner may impose a penalty equal to twenty-five per cent of the amount of tax involved or ten thousand shillings whichever is greater, and the provisions of this Act relating to the collection and recovery of that tax shall also apply to the collection and recovery of the penalty as if it were tax due from the employer:

Provided that, instead of the Commissioner imposing a penalty under this subsection, a prosecution may be instituted for an offence under section 109(1)(j).

(3) The Commissioner may remit the whole or part of any penalty imposed under this section up to a maximum of five hundred thousand shillings per employer per annum:

Provided that—

- (a) the Commissioner may remit any amount of penalty in excess of five hundred thousand shillings per employer per annum with the prior written approval of the Minister; and
- (b) (the Commissioner shall make a quarterly report to the Minister of all penalties remitted during that quarter.

(4) Any tax deducted under this section from the emoluments of an employee shall be deemed to have been paid by that employee and shall be set-off for the purposes of collection against tax charged on that employee in respect of those emoluments in any assessment for the year of income in which such emoluments are received.

(5) Where a person who is required under this section to deduct tax fails to remit the amount of any deduction to such person as the Commissioner may direct within the time limit specified in rules made under section 130, the provisions of this Act relating to the collection and recovery of tax, and the payment of interest thereon, shall apply to the

collection and recovery of that amount as if it were tax due and payable by that person, the due date for the payment of which is the date specified in rules made under section 130 by which that amount should have been remitted to the payee.

(5A) An employer aggrieved by the imposition of a penalty by the Commissioner or any other decision taken by the Commissioner under this section may, by notice in writing to the Commissioner, within thirty days, object to such imposition or decision.

(5B) The provisions of this Act in respect of objections shall, *mutatis mutandis*, apply to objections under this section.

(6) *Deleted by Act No. 38 of 2016, s. 10(a).*

(7) *Deleted by Act No. 38 of 2016, s. 10(b).*

Section 39 of Cap 470 which it is proposed to amend—

39. Set-off of tax

(1) An amount of tax which—

(a) has been deducted under section 17A (in respect of a person other than an individual), sections 35, 36 or 37; or

(b) has been borne by a trustee, executor or administrator in his capacity as such on an amount paid as income to a beneficiary, shall be deemed to have been paid by the person chargeable with that tax and shall be set off for the purposes of collection against the tax charged on that person for the year of income in respect of which it was deducted, and where an assessment is made by the Commissioner on a person for a year of income under section 73 the amount of tax which has already been paid under a provisional assessment on that person for that year of income shall be set off for the purposes of collection against the tax charged in the assessment made under section 73;

(c) has been paid by a person under section 12A.

(2) If any citizen of Kenya chargeable to tax in Kenya for any year of income on employment income or income in respect of any activity under section 10(e) of this Act accrued in or derived from another country proves to the satisfaction of the Commissioner that he has paid tax in such other country for such year of income in respect of the same income, he shall be entitled to set-off by way of credit of the same tax against the tax charged in Kenya on such income.

(3) The tax chargeable on the income of any person in respect of which set-off is to be allowed under this section shall be taken to be the amount by which the tax chargeable (before set-off under this section) in respect of his employment income or income specified under section 10(e) is increased by the inclusion of such income in his employment income or income specified under section 10(e).

(4) Credit under this section shall not exceed the amount of tax payable in Kenya on such employment income or income in respect of any activity under section 10(e).

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

FIRST SCHEDULE

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.

3. *Deleted by Act No. 57 of 2012, s. 23(a).*

4. *Deleted by Act No. 2 of 2020, Sch.*

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. *Deleted by Act No. 2 of 2020, Sch.*

8. The income of any county government.

[Act No. 16 of 2014, s. 20.]

9. Deleted by Act No. 2 of 2020, Sch.

10. Subject to section 26, the income of an institution, body of persons or irrevocable trust, of a public character established solely for the purposes of the relief of the poverty or distress of the public, or for the advancement of religion or education—

- (a) established in Kenya; or
- (b) whose regional headquarters is situated in Kenya, in so far as the Commissioner is satisfied that the income is to be expended either in Kenya or in circumstances in which the expenditure of that income is for the purposes which result in the benefit of the residents of Kenya:

Provided that any such income which consists of gains or profits from a business shall not be exempt from tax unless such gains or profits are applied solely to such purposes and either—

- (i) such business is carried on in the course of the actual execution of such purposes;
- (ii) the work in connexion with such business is mainly carried on by beneficiaries under such purposes; or
- (iii) such gains or profits consist of rents (including premiums or any similar consideration in the nature of rent) received from the leasing or letting of land and any chattels leased or let therewith; and provided further that an exemption under this paragraph—
 - (A) shall be valid for a period of five years but may be revoked by the Commissioner for any just cause; and
 - (B) shall, where an applicant has complied with all the requirements of this paragraph, be issued within sixty days of the lodging of the application.

[Act No. 13 of 1975, Act No. 6 of 2001, s. 53, Act No 57 of 2012, s. 23(b).]

11. 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.

12. The income of any registered pension scheme.

13. The income of any registered trust scheme.

14. The income of any registered pension fund.

15. The income of a registered provident fund.

16. The income from the investment of an annuity fund, as defined in section 19 of this Act, of an insurance company.

17. Pensions or gratuities granted in respect of wounds or disabilities caused in war and suffered by the recipients of such pensions or gratuities.

18. *Deleted by Act No. 2 of 2020, Sch.*

19. *Deleted by Act No. 8 of 1978, s. 9.*

20. *Deleted by Act No. 8 of 1978, s. 9.*

21. *Deleted by Act No. 8 of 1978, s. 9.*

22. 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.

23. 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.

24. *Deleted by Act No. 8 of 1978, s. 9.*

25. *Deleted by Act No. 2 of 2020, Sch.*

26. 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.

27. 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.

28. Deleted by Act No. 2 of 2020, Sch.

29. Deleted by Act No. 2 of 2020, Sch.

30. Deleted by Act No. 2 of 2020, Sch.

31. Deleted by Act No. 2 of 2020, Sch.

32. Deleted by Act No. 2 of 2020, Sch.

33. Deleted by Act No. 2 of 2020, Sch.

34. Deleted by Act No. 2 of 2020, Sch.

35. Interest on a savings account held with the Kenya Post Office Savings Bank.

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—

(a) deleted by Act No. 2 of 2020, Sch.;

(b) deleted by Act No. 2 of 2020, Sch.;

(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) deleted by Act No. 2 of 2020, Sch.;

(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.

(g) property, including investment shares, which is transferred or sold for the purpose of transferring the title or the proceeds into a registered family trust.

[Act No. 14 of 2015, s. 16(a), Act No. 2 of 2020, Sch, Act No. 8 of 2021, s. 18.]

37. Deleted by Act No. 57 of 2012, s. 23(c).

38. Deleted by Act No. 10 of 1987, s. 36.

39. Deleted by Act No. 10 of 1987, s. 36.

40. Deleted by Act No. 2 of 2020, Sch.

41. *Deleted by Act No. 2 of 2020, Sch.*

42. The income of a non-resident person who carries on the business of aircraft owner, charterer or air transport operator, from such business where the country in which such non-resident person is resident extends a similar exemption to aircraft owners, charterers or air transport operators who are not resident in such country but who are resident in Kenya.

43. The income of a registered individual retirement fund.

44. *Deleted by Act No. 8 of 2020, s. 8.*

[Act No. 8 of 2020, s. 8]

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

45A. The income of the National Hospital Insurance Fund established under the National Hospital Insurance Fund Act, 1998 consisting of—

(a) all contributions and other payments into and out of the Fund; and

(b) monies invested under section 34 of the Act.

[Act No. 11 of 2017, Sch.]

46. *Deleted by Act No. 2 of 2020, Sch.*

47. *Deleted by Act No. 2 of 2020, Sch.*

48. Gains arising from trade in securities listed on any securities exchange operating in Kenya by any dealer licensed under the Capital Markets Authority Act (Cap. 485A):

Provided that such securities have been held for a period not exceeding twenty-four months from the date of acquisition.

49. Interest income accrued in or derived from Kenya under financial arrangements made or guaranteed by the Export-Import Bank of the United States, an agency of the United States of America.

(1) Investment income of a pooled fund or other kind of investment consisting of retirement schemes, provided that all the constituent schemes of the pooled fund are registered by the Commissioner.

(2) For the purposes of this paragraph, “pooled fund” has the meaning assigned to it under the Retirement Benefit Act, 1997 (No. 3 of 1997).

[Act No. 10 of 2006, s. 29.]

50. Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure and other social services, provided that such bonds, notes or securities shall have a maturity of at least three years.

[Act No. 10 of 2006, s. 29, Act No. 10 of 2010, s. 32.]

51. *Deleted by Act No. 2 of 2020, Sch.*

52. Monthly pension granted to a person who is sixty-five years of age or more.

[Act No. 38 of 2016, s. 16, Act No. 8 of 2020, s. 8.]

53. Interest income on bonds issued by the East African Development Bank.

[Act No. 38 of 2016, s. 16.]

54. *Deleted by Act No. 2 of 2020, Sch.*

55. *Deleted by Act No. 2 of 2020, Sch.*

56. The income of the National Housing Development Fund.

[Act No. 23 of 2019, s. 14.]

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

[Act No. 23 of 2019, s. 14.]

Provided that —

- (a) the individual shall qualify for the exemption upon payment of registration fee of ten thousand shillings per annum; and
- (b) the Cabinet Secretary shall, in consultation with the Cabinet Secretary for the ministry responsible for information communication technology, issue regulations for the better carrying out of this provision.

[Act No. 23 of 2019, s. 14.]

58. The amount withdrawn from the National Housing Development Fund to purchase a house by a contributor who is a first-time home-owner.

59. Interest income accruing from all listed bonds, notes or other similar securities used to raise funds for infrastructure, projects and assets defined under Green Bonds Standards and Guidelines, and other social services:

Provided that such bonds, notes or securities shall have a maturity of at least three years.

Part II— SECURITIES, THE INTEREST ON WHICH IS EXEMPT FROM TAX

Repealed by Act No. 2 of 2020, Sch.

Second Schedule of Cap 470 which it is proposed to amend—

SECOND SCHEDULE

INVESTMENT ALLOWANCE

1. 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—

Capital expenditure incurred	Rate of Investment Allowance
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(a) Buildings

(i) Hotel building	50% in the first year of use
(ii) Building used for manufacture	50% in 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, in equal instalments
(vi) Educational buildings including student hostels	10% per year, in equal instalments
(vii) Commercial building	10% per year, in equal instalments

(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, in equal instalments

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| (v) | Motor vehicles and heavy earth moving equipment, | 25% per year, in equal instalments |
| (vi) | Computer and peripheral computer hardware and software, calculators, copiers and duplicating machines | 25% per year, in equal instalments |
| (vii) | Furniture and fittings | 10% per year, in equal instalments |
| (viii) | Telecommunications equipment | 10% per year, in equal instalments |
| (ix) | Filming equipment by a local film producer licensed by the Cabinet Secretary responsible for filming | 25% per year, in equal instalments |
| (x) | Machinery used to undertake operations under a prospecting right | 50% in the first year of use and 25% per year, in equal instalments |
| (xi) | Machinery used to undertake exploration operations | 50% in the first year of use and 25% per year, in equal instalments |
| (xii) | Other machinery | 10% per year, in equal instalments |
| (c) | Purchase or an acquisition of an indefeasible right to use fibre optic cable by a telecommunication operator | 10% per year, in equal instalments |
| (d) | Farmworks | 50% in the first year of use and 25% per year, in equal instalments |

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, but does not include design, storage, transport, administration or any other ancillary activity.
- (g) civil works include—
 - (i) roads and parking areas;
 - (ii) railway lines and related structures;
 - (iii) water, industrial effluent and sewerage works;

(iv) communications and electrical posts and pylons and other electrical supply works; and

(v) security walls and fencing.

(h) "Farm works" means farmhouses, labour quarter, any other immovable building necessary for the proper operation of the farm, fences, dips, drains, water and electricity supply works and other works necessary for the proper operation of the farm.

(1A) Notwithstanding paragraph 1, the investment deduction shall be one hundred per cent where—

(a) the cumulative investment value in the preceding three years outside Nairobi City County and Mombasa County is at least two billion shillings:

Provided that where the cumulative value of investment for the preceding three years of income was two billion shillings on or before the 25th April, 2020, and the applicable rate of investment deduction was one hundred and fifty per cent, that rate shall continue to apply for the investment made on or before the 25th April, 2020;

(b) the investment value outside Nairobi City County and Mombasa County in that year of income is at least two hundred and fifty million shillings; or

(c) the person has incurred investment in a special economic zone.

2. Calculation of written down or residual value

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.

3. Treatment of excess or deficit of realised amounts

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.

4. Balancing charge or deduction on cessation of business

(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.

5. Determination of market value of items used in a business

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.

6. Restriction on capital expenditure on motor vehicles

(1) Where capital expenditure exceeding three million shillings is incurred on a motor vehicle, other than a commercial vehicle, that 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.

7. Limitation on capital expenditure on buildings

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

8. Ascertainment of capital expenditure on buildings

(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.

9. Expenditure incurred for a person

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

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

THIRD SCHEDULE

RATES OF PERSONAL RELIEF AND TAX

HEAD A – RESIDENT PERSONAL RELIEF

1. Personal Relief

The amount of the personal relief shall be twenty-eight thousand eight hundred shillings:

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

[Act No. 38 of 2016, s. 17(a), Act No. 15 of 2017, s. 18(a), Act No. 2 of 2020, Sch.]

2. Insurance Relief

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

3. Affordable housing relief

The amount of affordable housing relief shall be 15% of the employee's contribution but shall not exceed Ksh. 108,000 per annum.

[Act No. 9 of 2018, Sch., Act No. 23 of 2019, s. 15.]

HEAD B – RATES OF TAX

1. The individual rates shall be—

	<i>Rate in each shilling</i>
On the first Ksh. 288,000	10%
On the next Ksh. 100,000	25%
Above Ksh 388,000	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 Ksh. 288,000	10%
On the next Ksh. 100,000	25%
Above Ksh. 388,000	30%

2. The corporation rate of tax shall be—

(a) in the case of a resident company—

	Rate of each Twenty Shillings
(i) for the year of income 1974 and each subsequent year of income up to and including the year of income 1990	9.00
(ii) for the year of income 1990	8.50
(iii) for the year of income 1991	8.00
(iv) for the year of income 1992 and each subsequent year of income	7.50
(v) for the year of income 1993 upto and including the year of income 1997	7.00
(vi) for the year of income 1998 upto and including the year of income 1999	6.50
(vii) for the year of income 2000 and each subsequent year of income	6.00
(viii) For the year of income 2020 and each subsequent year of income	5.00
(ix) For the year of income 2021 and each subsequent year of income	6.00

Provided that this provision shall apply to the income earned from the 1st January, 2021.

Provided that for a resident company with an accounting period ending between the 1st July, 1994 and the 30th June, 1995 the corporation rate of tax shall be increased by one-half shilling in each twenty shillings

(b) In the case of a non-resident company having a permanent establishment in Kenya—

(i) for the year of income 1974 and each subsequent year of income up to and including the year of income 1989	10.50
(ii) for the year of income 1990	10.00
(iii) for the year of income 1991	9.50
(iv) for any year of income 1992 and each subsequent year of income	9.00
(v) for the year of income 1993 up to and including the year of income 1997	8.50
(vi) for the year of income 1998 up to and including 1999	8.00
(vii) For the year of income 2000 and each subsequent year of income	7.50

Provided that for a non-resident company having a permanent establishment in Kenya with an accounting period ending between the 1st July, 1994 and the 30th June, 1995, the corporation rate of tax shall be increased by one-half shilling in each twenty shillings—

(b) deleted by Act No. 2 of 2020, Sch.;

(c) deleted by Act No. 2 of 2020, Sch.;

(d) deleted by Act No. 2 of 2020, Sch.;

(e) an export processing zone enterprise which does not engage in any commercial activities shall be exempted from paying any corporation tax for a period of ten years commencing with the year in which production, sales or receipts relating to the activities for which that enterprise has been licensed as an export processing zone enterprise commence; but the corporation rate of tax will be twenty-five per cent for the period of ten years commencing immediately thereafter:

Provided that for purposes of this subparagraph, “commercial activities” includes trading in, breaking bulk, grading, repacking or relabelling of goods and industrial raw materials.

(g) (i) deleted by Act No. 2 of 2020, Sch.;

(ii) a gain on transfer of securities traded on any securities exchange licensed by the Capital Markets Authority is not chargeable to tax under section 3(2)(f);

(e) in the case of a special economic zone enterprise, whether the enterprise sells its products to markets within or outside Kenya developer and operator, ten per cent for the first ten years from date of first operation and thereafter fifteen per cent for another ten years;

(f) in the case of a company that constructed at least one hundred residential units annually, fifteen per cent for that year of income, subject to approval by the Cabinet Secretary responsible for housing;

(g) in the case of company whose business is local assembling of motor vehicles, fifteen per cent for the first five years from the year of commencement of its operations:

Provided that the rate of fifteen per cent shall be extended for a further period of five years if the company achieves a local content equivalent to fifty per cent of the ex-factory value of the motor vehicles;

(k) deleted by Act No. 2 of 2020, Sch.;

(l) deleted by Act No. 2 of 2020, Sch.;

(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.

[Act No. 14 of 2015, 18(a), Act No. 11 of 2017, Sch., Act No. 15 of 2017, s. 18(ii)(a)(b), Act No. 10 of 2018, s. 11(a), Act No. 13 of 2019, s. 15, Act No. 2 of 2020, Sch, Act No. 22 of 2020, Sch.]

3. The non-resident tax rates shall be—

(a) in respect of management or professional fees or training fees, consultancy, agency or contractual fee, twenty per cent of the gross sum payable:

Provided that —

- (a) the rate applicable to any payments made by Special Economic Zone Enterprise, Developer or Operator to a non-resident person shall be 5% of the gross amount payable;
- (b) the rate applicable to the citizen of the East African Community Partner States in respect of consultancy fee shall be fifteen per cent of the gross sum payable;
- (c) in respect of a royalty or natural resource income, twenty per cent of the gross amount payable:

Provided that the rate applicable to any royalty paid by any Special Economic Zone Enterprise, Developer or Operator to a non-resident person shall be 5% of the gross amount payable;

- (c) (i) in respect of a rent premium or similar consideration for the use or occupation of immovable property, thirty per cent of the gross amount payable;
- (ii) in respect of a rent, premium or similar consideration for the use of property other than immovable property, fifteen per cent of the gross amount payable;
- (d) in respect of a dividend, fifteen 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;

- (e) (i) in respect of interest and deemed interest arising from a Government bearer bond of at least two years duration and interest, discount or original issue discount, fifteen per cent of the gross sum payable;
- (ii) in respect of interest, arising from bearer instrument other than a Government bearer bond of at least two years duration, twenty-five per cent of the gross amount payable;
- (iii) in respect of interest paid by any Special Economic Zone Enterprise, Developer or Operator to a non-resident persons, 5% of the gross amount payable.
- (f) in respect of a pension or retirement annuity, five per cent of the gross amount payable;
- (g) in respect of 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, twenty per cent of the gross amount payable;

- (h) in respect of an activity by way of supporting, assisting or arranging any appearance or performance mentioned in subparagraph (g) of this paragraph, twenty per cent of the gross amount payable;
- (i) in respect of winnings, twenty percent;
- (j) deleted by Act No. 16 of 2014, s. 22(a)(v);
- (k) in respect of gains or profits from the business of a ship-owner which is chargeable to tax under section 9(1) of the Act, two and a half per cent of the gross amount received;
- (l) in respect of gains and profits from the business of transmitting messages by cable or radio communication, optical fibre, television broadcasting, Very Small Aperture Terminal (VSAT), internet and satellite or any other similar method of communication which is chargeable to tax under section 9(2), five per cent of the gross amount received;
- (m) deleted by Act No. 38 of 2016, s. 17 (e)(i);
- (n) in the case of a special economic zones enterprise, developer and operator in respect of payments other than dividends made to non-residents at the rate of ten percent;
- (o) deleted by Act No. 23 of 2019, s. 15(ii);
- (p) an insurance or reinsurance premium, five per cent of the gross amount payable;
- (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;

Provided that with regard to transportation of goods, the rate shall not be applicable to East African Community citizens.

[Act No. 16 of 2014, s. 22(a), Act No. 14 of 2015, s. 18(b), Act No. 38 of 2016, s. 17(e)(i), Act No. 15 of 2017, s. 18(c)(i)(ii)(iii), Act No. 9 of 2018, Sch, Act No. 10 of 2018, s. 11(b), Act No. 123 of 2019, s. 15, Act No. 2 of 2020, Sch.]

4. Deleted by Act No. 6 of 1994, s. 47.

5. The resident withholding tax rates shall be—

- (a) in respect of a dividend, fifteen per cent of the amount payable;
- (b) in respect of interest, discount or original issue discount arising from—

- (i) bearer instrument other than a Government bearer bond of at least two years duration, twenty-five per cent;
 - (ii) Government Bearer Bond of at least two years duration and other sources, fifteen per cent;
 - (iii) bearer bonds with a maturity of ten years and above, ten per cent of the gross amount payable, of the gross amount payable;
- (c) in respect of a commission or fee, paid or credited by an insurance company to any person for the provision, whether directly or indirectly, of an insurance cover to any person or group of persons, five per cent of the gross amount payable to all others;
- (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—

	Rate in each shilling
On the first KSh. 400,000	10%
On the next KSh. 400,000	15%
On the next KSh. 400,000	20%
On the next KSh. 400,000	25%
On all income above KSh. 1,600,000 of the amounts in excess of the tax-free amount.	30%

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)]section 8(4) and 8(5) in any one year—

Rate in each shilling

On the first Ksh. 288,000	10%
On the next Ksh. 100,000	25%
Above Ksh. 388,000	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;
- (e) in respect of a qualifying dividend, five per cent of the amount payable;
- (f) (i) in respect of management or professional fee or training fee, other than contractual fee, the aggregate value of which is twenty-four thousand shillings in a month or more, five per cent of the gross amount payable;
- (g) in respect of a royalty or natural resource income, five per cent of the gross amount payable;
- (h) in respect of qualifying interest—
 - (i) in respect of winnings, twenty percent;

Provided that the tax paid under this subparagraph is final.

- (j) deleted by Act No. 38 of 2016, s. 17 (e)(ii);
 - (ja) in respect of a rent, premium or similar consideration for the use or occupation of immovable property, ten percent of the gross amount payable.
 - (jb) in respect to the disbursement of deemed income to beneficiaries under section 11(3)(c) the rate of twenty five percent.

(k) deleted by Act No. 14 of 2015, s. 18(c)(iii).

[Act No. 14 of 2015, s. 18(c), Act No. 38 of 2016, s. 17 (d) & (e)(ii), Act No. 15 of 2017, s. 18 (c)(iv), Act No. 9 of 2018, Sch, Act No. 2 of 2020, Sch, Act No. 22 of 2020, Sch., Act No. 8 of 2021, s. 20.]

6. Deleted by No. 16 of 2014, s. 22(c).

7. The rate of presumptive income tax in respect of agricultural produce under subsection (1) of section 17A shall be two per cent of the gross amount of payment or the gross value of export.

8. The rate of advance tax under section 12A shall be—

(a) for vans, pick-ups, trucks, prime movers, trailers and lorries: one thousand five hundred shillings per ton of load capacity per year or two thousand four hundred shillings per year, whichever is the higher;

Provided that advance tax shall not be imposed on tractors or trailers used for agricultural purposes;

(b) for saloons, station-wagons, mini-buses, buses and coaches: sixty shillings per passenger capacity per month or two thousand four hundred shillings per year, whichever is the higher;

(c) deleted by Act No. 10 of 2010, s. 34.

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

[Act No. 10 of 2018, s. 11(c), Act No. 23 of 2019, s. 15, Act No. 2 of 2020, Sch.]

10. The rate of tax in respect of residential rental income shall be ten percent of the gross rental receipts of a taxable resident person under section 6A

[Act No. 14 of 2015, s. 18(d).]

11. The rate of tax in respect of minimum tax under section 12D shall be one per cent of the gross turnover.

[Act No. 8 of 2020, s. 9.]

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.

[Act No. 8 of 2020, s. 9.]

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

Charge to tax

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;
 - (aa) in the case of goods listed in section B of Part I of the First Schedule, eight per cent of the taxable value, effective from the date of assent; or
- (b) in any other case, fourteen 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.

(6) Tax on the supply of imported taxable services shall be a liability of any person receiving the supply and, subject to the provisions of this Act relating to accounting and payment, shall become due at the time of the supply.

(7) The provisions of subsection (1) shall be applicable to supplies made over the internet or an electronic network or through a digital marketplace.

(8) The Cabinet Secretary shall make regulations to provide the mechanisms for implementing the provisions of subsection (7).

(9) For the purposes of this section, “digital marketplace” means an online platform which enables users to sell or provide services, goods or other property to other users.

*Section 10 of No. 35 of 2013 which it is proposed to amend—***Treatment of imported services**

10(1) If a supply of imported taxable services is made to any person, the person shall be deemed to have made a taxable supply to himself.

(2) If the person referred to in subsection (1) is a registered person and is entitled to—

- (a) a credit for part of the amount of input tax payable, the value of the taxable supply under subsection (1) shall be reduced by an amount equal to the supply that is entitled for the input tax credit; or
- (b) a full input tax credit payable on the imported taxable services under subsection (1), the value of the taxable services shall be reduced to zero.

(3) The output tax in respect of a deemed taxable supply under subsection (1) shall be payable at the time of the supply.

(4) For the purposes of this section, if a registered person carries on a business, both in and outside Kenya, the part of the business carried on outside Kenya shall be treated as if it were carried out by a person separate from the registered person.

*Section 17 of No. 35 of 2013 which it is proposed to amend—***Credit for input tax against output tax**

17(1) Subject to the provisions of this Act 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 tax payable by the person on supplies by him in that tax period, but only to 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)—

- (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.

(3) The documentation for the purposes of subsection (2) shall be—
an original tax invoice issued for the supply or a certified copy;

- (a) a customs entry duly certified by the proper officer and a receipt for the payment of tax;
- (b) 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;
- (c) a credit note in the case of input tax deducted under section 16(2);
or
- (d) 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, leasing or hiring 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:

$$\frac{A \times B}{C}$$

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.

(8) Notwithstanding the provisions of this section, a registered person who is a manufacturer may make a deduction for input tax with respect to taxable supplies made to an official aid funded project as may be approved by the Cabinet Secretary in accordance with the First Schedule.

Section 22 of No. 35 of 2013 which it is proposed to amend—

Imported goods subject to customs control

22(1) A person shall not be entitled to obtain delivery of imported taxable goods from the control of the customs unless the person has paid, in full, the correct amount of tax due.

(2) Notwithstanding the provisions of any other written law, any taxable goods which are imported by air, land or water shall be produced by the importer to a proper officer of customs at the customs station at or nearest to the place of entry, and any importer who fails to produce any such goods commits an offence and the goods in respect of which the offence was committed shall be liable to forfeiture.

(3) The Commissioner of Customs—

- (a) shall collect tax payable under this Act on imported goods at the time of importation and shall, at that time, obtain such information as may be prescribed in respect of the importation; and
- (b) may make arrangements for such functions to be performed on his behalf in respect of imported goods through the postal service.

(4) For the purposes of this section, the Commissioner of Customs may exercise any power conferred upon him by the East African Community Customs Management Act, 2004 (No. 8 of 2004) as if the reference to import duty in that Act includes a reference to tax payable on imported goods under this Act.

Section 30 of No. 35 of 2013 which it is proposed to amend—

Refund of tax paid in error

30. Where, in respect of any supply, tax has been paid in error, the Commissioner shall, except as otherwise provided by the regulations, refund such tax:

Provided that no refund shall be made under this section unless a claim in respect thereof is lodged within twelve months from the date the tax became due and payable under section 19.

Section 34 of No. 35 of 2013 which it is proposed to amend—

Application for registration

34(1) A person who in the course of a business—

- (a) has made taxable supplies or expects to make taxable supplies, the value of which is five million shillings or more in any period of twelve months; or
- (b) is about to commence making taxable supplies the value of which is reasonably expected to exceed five million shillings in any period of twelve months,

shall be liable for registration under this Act and shall, within thirty days of becoming so liable, apply to the Commissioner for registration in the prescribed form.

(2) In determining whether a person exceeds the registration threshold for a period, the value of the following taxable supplies shall be excluded—

- (a) a taxable supply of a capital asset of the person; and
- (b) a taxable supply made solely as a consequence of the person selling the whole or a part of the person's business or permanently ceasing to carry on the person's business.

(3) Notwithstanding subsection (1), a person who makes or intends to make taxable supplies may apply, in the prescribed form, to the Commissioner for voluntary registration.

(4) The Commissioner shall register a person who has applied for voluntary registration under subsection (3) if satisfied that—

- (a) the person is making, or shall make taxable supplies;
- (b) the person has a fixed place from which the person's business is conducted;
- (c) if the person has commenced carrying on a business, the person—
 - (i) has kept proper records of its business; and

(ii) has complied with its obligations under other revenue laws; and

(d) there are reasonable grounds to believe that the person shall keep proper records and file regular and reliable tax returns.

(5) The Commissioner shall issue a registered person with a tax registration certificate in the prescribed form.

(6) If the Commissioner is satisfied that a person eligible to apply for registration has not done so within the time limit specified in subsection (1), the Commissioner shall register the person.

(7) The registration of a person under subsection (1) or (6) shall take effect from the beginning of the first tax period after the person is required to apply for registration, or such later period as may be specified in the person's tax registration certificate.

(8) The registration of a person under subsection (4) shall take effect from the date specified in the person's tax registration certificate.

(9) The Cabinet Secretary may, in regulations, provide for the registration of a group of companies as one registered person for the purposes of the Act.

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

FIRST SCHEDULE

[Section 2, Act No. 7 of 2014, s. 2, Act No. 16 of 2014, s. 28, Act No. 14 of 2015, s. 5, Act No. 24. of 2016, s. 2, Act No. 38 of 2016, s. 30, Act No. 11 of 2017, Act No. 15 of 2017, s. 9, Act No. 9. of 2018, Sch., Act No. 10 of 2018, s. 19, Act No. 23 of 2019, s. 21, Act No. 2 of 2020, Sch., Act No. 8 of 2020, s. 13, Act No. 8 of 2021, s. 27.]

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.
[Act No. 7 of 2014, s. 2(a)(ii).]
- 17B. Unprocessed produce of plant species *camellia sinensis*.
[Act No. 7 of 2014, s. 2(a)(ii).]
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.

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

26. Fertilisers of Chapter 31.

27. *Deleted by Act No. 2 of 2020, Sch.*

28. *Deleted by Act No. 10 of 2018, s. 19(a)(iii).*

29. *Deleted by Act No. 2 of 2020, Sch.*

30. *Deleted by Act No. 2 of 2020, Sch.*

30A. *Deleted by Act No. 2 of 2020, Sch.*

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. *Deleted by Act No. 8 of 2021, s. 27(a)(i).*

34. *Deleted by Act No. 8 of 2021, s. 27(a)(ii).*

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.

Tariff Number	Description
2106.10.00	Protein concentrates and textured protein substances
2106.90.10	Food preparations specially prepared for infants
2106.90.20	<i>Deleted by Act No. 7 of 2014, s. 2(a)(i)</i>
2106.90.99	Other - Food preparations not elsewhere specified or included
2106.90.91	Food supplements
2936.27.00	Vitamin C and its derivatives
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.
3001.90.00	Other - Heparin and its salts
3001.90.00	Other - Other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included
3001.90.10	<i>Deleted by Act No. 8 of 2021, s. 27(a)(iii)</i>
3001.90.90	<i>Deleted by Act No. 8 of 2021, s. 27(a)(iii)</i>
3002.10.00	<i>Deleted by Act No. 8 of 2021, s. 27(a)(iii)</i>
3002.11.00	Malaria diagnostic test kits
3002.12.00	Antisera and other blood fractions
3002.13.00	Immunological products unmixed, not put up in measured doses or in forms or packings for retail sale
3002.14.00	Immunological products, mixed, not put up in measured doses or in forms or packings for retail sale
3002.15.00	Immunological products put up in measured doses or in forms or packings for retail sale
3002.19.00	Other - Antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes

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.
3003.20.00	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.
3003.31.00	Insulin
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.
3004.31.00	Medicaments containing insulin 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.
3004.40.00	Medicaments containing alkaloids or derivatives thereof but not containing hormones, or other products of heading No. 29.37 or 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.
3004.43.00	Other medicaments, containing alkaloids or derivatives containing norephedrine 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.
3004.60.00	Other, containing antimalarial active principles described in Subheading Note 2 to this Chapter
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.

3004.90.10	Infusion solutions for ingestion other than by mouth 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.
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.
3005.10.00	Adhesive dressings and other articles having an adhesive layer impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.
3005.90.10	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	<i>Deleted by Act No. 8 of 2020, s. 13(a)(ii)</i>
8407.10.00	<i>[Act No. 14 of 2015, s. 5(a)(ii).]</i>
8409.10.00	<i>[Act No. 14 of 2015, s. 5(a)(ii).]</i>
8802.11.00	<i>Deleted by Act No. 8 of 2020, s. 13(a)(i)</i>
8802.12.00	<i>Deleted by Act No. 8 of 2020, s. 13(a)(i)</i>
8802.20.00	<i>Deleted by Act No. 8 of 2020, s. 13(a)(i)</i>
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.
8802.60.00	Spacecraft (including satellites) and suborbital and spacecraft launch vehicles.
8803.30.00	<i>Deleted by Act No. 8 of 2020, s. 13(a)(i)</i>
8805.10.00	<i>Deleted by Act No. 8 of 2020, s. 13(a)(i)</i>
8805.21.00	<i>Deleted by Act No. 8 of 2020, s. 13(a)(i)</i>
8805.29.00	<i>Deleted by Act No. 8 of 2020, s. 13(a)(i)</i>
9018.90.00	Blood giving set and infusion sets
9619.00.10	Sanitary towels (pads) and tampons.

9019.20.00	Airway Guedel and Ambu bags
9021.10.00	Orthopaedic or fracture appliances
9021.50.00	Other artificial parts of the body: Pacemakers for stimulating heart muscles, excluding parts and accessories
9025.19.00	Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments, thermometers and pyrometers, not combined with other instruments: Other
1006.30.00	Semi-milled or wholly milled rice, whether or not polished or glazed.
1101.00.00	<i>Deleted by Act No. 15 of 2017, s. 9(a)(iv)</i>
1102.20.00	<i>Deleted by Act No. 15 of 2017, s. 9(a)(iv)</i>
0402.21.00	Milk in powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5%, not containing added sugar or other sweetening matter
0402.21.10	<i>Deleted by Act No. 8 of 2021, s. 27(a)(iii)</i>
0402.29.00	Other milk in powder granules or other solid forms, of a fat content, by weight, exceeding 1.5%
0402.29.10	Milk, specially prepared for infants.
0402.91.00	Other not containing added sugar or other sweetening matter.
0402.91.10	<i>Deleted by Act No. 8 of 2021, s. 27(a)(iii)</i>
0402.99.00	Other milk
0402.99.10	<i>Deleted by Act No. 8 of 2021, s. 27(a)(iii)</i>

Gluten bread.

Unleavened bread.

[Act No. 2 of 2020, Sch., Act No. 8 of 2020, s. 13(a) (i) & (ii), Act No. 8 of 2021, s. 27(a)(iii) & (iv).]

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

[Act No. 7 of 2014, s. 2(a)(v).]

41. Mosquito nets of tariff No. 6304.91.10.

[Act No. 7 of 2014, s. 2(a)(v).]

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.

[Act No. 7 of 2014, s. 2(a)(v), Act No. 38 of 2016, s. 30 (a)(i), Act No. 10 of 2018, s. 19(a)(iv).]

44. Unprocessed green tea.

[Act No. 7 of 2014, s. 2(a)(v).]

45. *Deleted by Act No. 8 of 2020, s. 13(a)(iii).*

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

47. *Deleted by Act No. 8 of 2020, s. 13(a)(iv).*

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.

[Act No. 16 of 2014, s. 28(a)(ii).]

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

[Act No. 14 of 2015, s. 5(b).]

50. *Deleted by Act No. 8 of 2020, s. 13(a)(v).*

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.

[Act No. 14 of 2015, s. 5(b), Act No. 38 of 2016, s. 30(a)(ii).]

52. *Deleted by Act No. 2 of 2020, Sch.*

52A. *Deleted by Act No. 2 of 2020, Sch.*

52B. *Deleted by Act No. 2 of 2020, Sch.*

53. *Deleted by Act No. 2 of 2020, Sch.*

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.

[Act No. 14 of 2015, s. 5(b), Act No. 38 of 2016, s. 30 (a)(iii).]

55. *Deleted by Act No. 2 of 2020, Sch.*

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.

[Act No. 14 of 2015, s. 5(b).]

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

[Act No. 14 of 2015, s. 5(b), Act No. 38 of 2016, s. 30(a)(v).]

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

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

59. Wheat seeds of tariff number 1001.11.00 and 1001.91.00.

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

60. *Deleted by Act No. 2 of 2020, Sch.*

61. *Deleted by Act No. 2 of 2020, Sch.*

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.

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

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.

[Act No. 38 of 2016, s. 30(a)(vi), Act No. 15 of 2017, s. 9(v), Act No. 10 of 2018, s. 19(a)(vii).]

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

65. *Deleted by Act No. 8 of 2020, s. 13(a)(vi).*

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.

[Act No. 38 of 2016, s. 30(a)(vi), Act No. 15 of 2017, s. 9(vi).]

67. Deleted by Act No. 8 of 2020, s. 13(a)(vii).

68. Super absorbent polymer (SAP) of tariff number 3906.90.00

[Act No. 38 of 2016, s. 30(a)(vi), Act No. 8 of 2021, s. 27(a)(vi).]

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

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

70. IP super soft fluff pulp — for-fluff 310 treated pulp 488*125mm (cellose) of tariff number 4703.21.00.

[Act No. 38 of 2016, s. 30(a)(vi), Act No. 8 of 2021, s. 27(a)(vii).]

71. Perforated PE film 15-22 gsm of tariff number 3921.90.00

[Act No. 38 of 2016, s. 30(a)(vi), Act No. 8 of 2021, s. 27(a)(viii).]

72. Spun bound non-woven 15-25 gsm of tariff number 5603.11.00

[Act No. 38 of 2016, s. 30(a)(vi), Act No. 8 of 2021, s. 27(a)(ix).]

73. Airlid paper with super absorbent polymer 180gsm/67 of tariff number 4803.00.00

[Act No. 38 of 2016, s. 30 (a)(vi), Act No. 8 of 2021, s. 27(a)(x).]

74. Airlid paper with super absorbent polymer 80gsm/67 of tariff number 4803.00.00

[Act No. 38 of 2016, s. 30(a)(vi), Act No. 8 of 2021, s. 27(a)(xi).]

75. Deleted by Act No. 8 of 2021, s. 27(a)(xii)

76. Deleted by Act No. 8 of 2021, s. 27(a)(xiii)

77. Pressure sensitive adhesive of tariff number 3506.91.00.

[Act No. 38 of 2016, s. 30(a)(vi), Act No. 8 of 2021, s. 27(a)(xiv).]

78. Plain polythene film/LPDE of tariff number 3921.19.10.

[Act No. 38 of 2016, s. 30(a)(vi), Act No. 8 of 2021, s. 27(a)(xv).]

79. Plain polythene film/PE of tariff number 3921.19.10

[Act No. 38 of 2016, s. 30(a)(vi), Act No. 8 of 2021, s. 27(a)(xvi).]

80. PE white 25-40gsm/release paper of tariff number 4811.49.00.

[Act No. 38 of 2016, s. 30(a)(vi), Act No. 8 of 2021, s. 27(a)(xvii).]

81. ADL 25-40gsm of tariff number 5603.11.00

[Act No. 38 of 2016, s. 30(a)(vi), Act No. 8 of 2021, s. 27(a)(xviii).]

82. Elasticized side tape of tariff number 5402.44.00

[Act No. 38 of 2016, s. 30 (a)(vi), Act No. 8 of 2021, s. 27(a)(xix).]

83. 12-16 gsm spun bound piyropo nonwoven cover stock/12 gsm spun bound PP non-woven SMS hydrophobic leg cuffs of tariff number 5603.11.00

[Act No. 38 of 2016, s. 30(a)(vi), Act No. 8 of 2021, s. 27(a)(xx).]

84. Polymetric elastic 2/3 strands of tariff number 3919.90.10.

[Act No. 38 of 2016, s. 30 (a)(vi), Act No. 8 of 2021, s. 27(a)(xxi).]

85. Deleted by Act No. 8 of 2021, s. 27(a)(xxii)

86. Deleted by Act No. 8 of 2021, s. 27(a)(xxiii)

87. Deleted by Act No. 8 of 2021, s. 27(a)(xxiv)

88. Deleted by Act No. 2 of 2020, Sch.

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.

[Act No. 15 of 2017, s. 9(a)(vii).]

90. Inputs for the manufacture of pesticides upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to agriculture.

[Act No. 15 of 2017, s. 9(a)(vii).]

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.

[Act No. 15 of 2017, s. 9(a)(vii).]

92. *Deleted by Act No. 10 of 2018, s. 19(a)(ix).*

93. *Deleted by Act No. 2 of 2020, Sch.*

94. *Deleted by Act No. 2 of 2020, Sch.*

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.

[Act No. 9 of 2018, Sch.]

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.

[Act No. 9 of 2018, Sch.]

96A. Personal protective equipment, including facemasks, for use by medical personnel in registered hospitals and clinics, or by members of the public in the case of a pandemic or a notifiable infectious disease.

[Act No. 2 of 2020, Sch.]

97. *Deleted by Act No. 2 of 2020, 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—
- (d) subject to subparagraphs (a) and (b) the following goods may be exempted under this item when imported as baggage by a person whom the proper office 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 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 traveller in respect of goods, other than goods referred to in paragraph (9), shall be exempted when imported by the traveller 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 Defence Forces Canteen Organization.

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

102. *Deleted by Act No. 2 of 2020, Sch.*

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

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

104. *Deleted by Act No. 8 of 2020, s. 13(a)(viii).*

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:

Provided that this paragraph shall, subject to paragraph 20 of the Second Schedule, be suspended for six months from the date of assent.

[Act No. 23 of 2019, s. 21, Act No. 8 of 2020, s. 13(a)(ix).]

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.]

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

[Act No. 8 of 2020, s. 13(b).]

112. Taxable goods, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration by a company granted a prospecting or exploration license in accordance with the Energy Act, 2019, production sharing contracts in accordance with the Petroleum Act, 2019, or a mining license in accordance with the Mining Act, 2016, upon recommendation by the Cabinet Secretary responsible for matters relating to energy, the Cabinet Secretary responsible for matters relating to petroleum, or the Cabinet Secretary responsible for matters relating to mining, as the case may be.

[Act No. 8 of 2021, s. 27(a)(xxv).]

113. Specialized equipment for the development and generation of solar and wind energy, including photovoltaic modules, direct current charge controllers, direct current inverters and deep cycle batteries that use or store solar power, upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to energy.

[Act No. 8 of 2021, s. 27(a)(xxv).]

114. Taxable goods supplied to persons that had an agreement or contract with the Government prior to 25th April 2020 and the agreement or contract provided for exemption from value added tax:

Provided that this exemption shall apply to the unexpired period of the contract or agreement and upon recommendation by the Cabinet Secretary responsible for matters relating to energy.

[Act No. 8 of 2021, s. 27(a)(xxv).]

115. Medical ventilators and the inputs for the manufacture of medical ventilators upon recommendation by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

116. Physiotherapy accessories, treadmills for cardiology therapy and treatment of tariff number 9506.91.00 for use by licensed hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

117. Dexpanthenol of tariff number 3304.99.00 used for medical nappy rash treatment by licensed hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

118. Medicaments of tariff numbers 3003.41.00, 3003.42.00, 3003.43.00, 3003.49.00, 3003.60.00 (excluding goods of heading 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses.

[Act No. 8 of 2021, s. 27(a)(xxv).]

119. Diagnostic or laboratory reagents, of tariff number 3822.00.00 on a backing, prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 30.02 or 30.06, certified reference materials upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

120. Electro-diagnostic apparatus, of tariff numbers 9018.11.00, 9018.12.00, 9018.13.00, 9018.14.00, 9018.19.00, 9018.20.00, 9018.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

121. Other instruments and appliances, of tariff number 9018.41.00, used in dental sciences, dental drill engines, whether or not combined on a single base with other dental equipment, upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

122. Other instruments and appliances, including surgical blades, of tariff number 9018.49.00, 9018.50.00, 9018.90.00 used in dental sciences upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

123. Ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

124. Other breathing appliances and gas masks, excluding protective masks having neither mechanical parts nor replaceable filters upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

125. Artificial teeth and dental fittings of tariff numbers 9021.21.00, 9021.29.00 and artificial parts of the body of tariff numbers 9021.31.00, 9021.39.00, 9021.50.00 and 9021.90.00 upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

126. Apparatus based on the use of x-rays, whether or not for medical, surgical or dental of tariff numbers 9022.12.00, 9022.13.00, 9022.14.00 and 9022.19.00 upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

127. Apparatus based on the use of alpha, beta or gamma radiations, whether or not for medical, surgical or dental of tariff numbers 9022.21.00, 9022.29.00, 9022.30.00 and 9022.90.00, upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

128. Discs, tapes, solid-state non-volatile storage devices, "smart cards" and other media for the recording of sound or of other phenomena, whether or not recorded, of tariff number 8523.80.10, including matrices and masters for the production of discs, but excluding products of Chapter 37; software upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

129. Weighing machinery (excluding balances of a sensitivity of 5 cg or better), of tariff number 8423.31.00, including weight operated counting or checking machines; weighing machine weights of all kinds upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

130. Fetal Doppler-Pocket (Wgd-002) Pc and pulse oximeter-finger held (Gima brand) Pc of tariff number 9018.19.00 upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

131. Sterilizer Dry Heat (Wgd-001-Grx-05A) Pc, autoclave steam table tops of tariff number 8419.20.00 upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

132. Needle holders and urine bags, of tariff heading 3926.

[Act No. 8 of 2021, s. 27(a)(xxv).]

133. Tourniquets of tariff number 3926.90.99 for use by licensed hospitals upon approval by the Cabinet Secretary responsible for matters relating to health.

[Act No. 8 of 2021, s. 27(a)(xxv).]

134. Taxable supplies including fish feeding and handling, water operations, cold storage, fish cages, pond construction and maintenance, and fish processing and handling, imported or purchased for direct and exclusive use on the recommendation of the relevant state department;

[Act No. 8 of 2021, s. 27(a)(xxv).]

135. Pre-fabricated biogas digesters.

[Act No. 8 of 2021, s. 27(a)(xxv).]

136. Biogas.

[Act No. 8 of 2021, s. 27(a)(xxv).]

137. Sustainable fuel briquettes for household and commercial use.

[Act No. 8 of 2021, s. 27(a)(xxv).]

138. The supply of denatured ethanol of tariff number 2207.20.00.

[Act No. 8 of 2021, s. 27(a)(xxv).]

139. Tractors other than road tractors for semitrailers.

[Act No. 8 of 2021, s. 27(a)(xxv).]

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).
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 — 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;

[Act No. 15 of 2017, s. 9(b)(i).]

- (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.

[Act No. 15 of 2017, s. 9(b)(ii).]

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, ambulance and nursing services.

[Act No. 8 of 2020, s. 13(c).]

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. Tea and coffee brokerage services.

[Act No. 2 of 2020, Sch.]

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 Co-ordination 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:

Provided that this paragraph shall not apply where any such services 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, excluding helicopters of tariff numbers 8802.11.00 and 8802.12.00.

[Act No. 8 of 2020, s. 13(d).]

18A. *Deleted by Act No. 8 of 2021, s. 27(c).*

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.

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

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.

[Act No. 14 of 2015, s. 5(c)(ii), Act No. 38 of 2016, s. 30 (b)(i).]

22. *Deleted by Act No. 2 of 2020, Sch.*

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.

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

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

[Act No. 14 of 2015, s. 5(c), Act No. 38 of 2016, s. 30(b)(iii).]

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

[Act No. 38 of 2016, s. 30(b)(iv).]

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.

[Act No. 38 of 2016, s. 30(b)(iv).]

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.

[Act No. 38 of 2016, s. 30(b)(iv).]

28. *Deleted by Act No. 2 of 2020, Sch.*

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

[Act No. 10 of 2018, s. 19(b)(ii).]

30. *Deleted by Act No. 2 of 2020, Sch.*

31. *Deleted by Act No. 2 of 2020, Sch.*

32. The exportation of taxable services.

[Act No. 8 of 2021, s. 27(b).]

33. The transfer of assets and other transactions related to the transfer of assets into real estate investment trusts and assetbacked securities.

[Act No. 8 of 2021, s. 27(b).]

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

SECOND SCHEDULE

[Section 7(2), Act No. 14 of 2015, s. 6, Act No. 38 of 2016, s. 31, Act No. 15 of 2017, s. 10, Act No. 9 of 2018, Sch., Act No. 10 of 2018, s. 20, Act No. 23 of 2019, s. 22, Act No. 2 of 2020, Sch., Act No. 8 of 2020, s. 14, Act No. 8 of 2021, s. 28.]

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.
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.
[Act No. 14 of 2015, s. 6(a).]
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.
[Act No. 14 of 2015, s. 6(a).]
12. The supply of goods or taxable services to a special economic zone enterprise.
[Act No. 38 of 2016, s. 31(a).]
13. *Deleted by Act No. 8 of 2020, s. 14(a).*
- 13A. The supply of ordinary bread.
[Act No. 15 of 2017, s. 10, Act No. 9 of 2018, Sch.]
- 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%.

[Act No. 15 of 2017, s. 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.

[Act No. 15 of 2017, s. 10.]

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

18. *Deleted by Act No. 8 of 2020, s. 14(b).*

19. Agricultural pest control products.

[Act No. 23 of 2019, s. 22.]

20. 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:

Provided this paragraph shall be in operation for a period of six months from the date of assent.

[Act No. 8 of 2020, s. 14(c).]

20. The transportation of goods originating from Kenya to a place outside Kenya.

[Act No. 8 of 2021, s. 28(b).]

21. Transportation of sugarcane from farms to milling factories.

[Act No. 8 of 2021, s. 28(b).]

22. 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. 8 of 2021, s. 28(b).]

PART B**ZERO RATED SUPPLIES TO PUBLIC BODIES, PRIVILEGED PERSONS AND INSTITUTIONS**

The following taxable supplies shall be zero-rated when supplied by a registered person before the imposition of tax or imported before clearance through the customs by or on behalf of the following persons subject to the limitations specified in this Schedule—

1. Supply to Commonwealth and other Governments

- (a) Goods consigned to officers or men on board a naval vessel belonging to another Commonwealth Government for their personal use or for consumption on board such vessel.
- (b) Goods for the use of any of the Armed Forces of any allied power.

2. Supply to Diplomat or First Arrivals Persons

(1) Household and personal effects of any kind imported by entitled personnel or their dependants including one motor vehicle imported or supplied to them prior to clearance through customs within ninety days of their first arrival in Kenya or such longer period not exceeding three hundred and sixty days from the date of his arrival, as may be approved by the Commissioner of Customs in specific cases where the entitled personnel have not been granted zero rating status in any other section of this Schedule.

Provided that the zero rating shall apply to entitled personnel who may have arrived for a new contract notwithstanding their previous residential status in Kenya while in execution of another assignment, provided further that each contract is for a term not less than two years.

(2) One motor vehicle which the ministry responsible for foreign affairs is satisfied as having been supplied or imported as a replacement for a motor vehicle originally imported or supplied under paragraph (1) which has been written off due to accident, fire or theft:

Provided that tax shall be payable at the appropriate rate if the written off motor vehicle is disposed of locally.

(3) Taxable supplies for the official use of the United Nations or its specialized agencies or any Commonwealth High Commission, or of any foreign embassy, consulate or diplomatic mission in Kenya.

(4) Taxable supplies for the use of a high official of the United Nations or its specialized agencies, or a member of the diplomatic staff of any Commonwealth or foreign country, where specific provision for such zero rating status is made by the Cabinet Secretary responsible for foreign affairs.

(5) Taxable supplies Goods for the United Nations or any of its specialized agencies for the support of a project in Kenya.

(6) On first arrival in Kenya or within three months of that date, the household and personal effects, including one motor vehicle, of an employee of the United Nations, or of its specialized agencies, of any Commonwealth High Commission, or of any foreign embassy, consulate or diplomatic mission, where the employee—

- (a) is not engaged in any other business or profession in Kenya; and
- (b) has not been granted any other zero rating status under this schedule.

(7) Any motor vehicle acquired under zero rating status pursuant to the provisions of this paragraph shall on re-sale or upon other disposition, whether or not for any material consideration, be liable to tax.

3. Supply to donor agencies with bilateral or multilateral agreements

(1) Household and personal effects of any kind, including one motor vehicle imported by or supplied prior to clearance through Customs to the entitled personnel or their dependants, within ninety days of their first arrival in Kenya or such longer period not exceeding three hundred and sixty days from the date of his arrival, as may be approved by the relevant authority in specific cases where the entitled personnel have not been granted any zero rated status under this schedule.

Provided that the zero rated status under this paragraph shall apply—

- (a) to entitled personnel who may have arrived for a new contract for a term of not less than two years, notwithstanding their previous residential status in Kenya while in execution of another assignment;
- (b) only once every four years where there is an on going project; and
- (c) to an additional motor vehicle where there is a bilateral agreement between the Government and aid agency.

(2) One motor vehicle, which the Commissioner is satisfied, is supplied or is imported as a replacement of another motor vehicle originally supplied or imported under paragraph (1) and which has been written off due to accident, fire or theft:

Provided that any motor vehicle acquired free of tax pursuant to the provisions of this item shall on resale or upon other disposition whether or not for any material consideration be liable for tax.

4. Supply to international and regional organizations

Goods, services and equipment imported by or supplied to donor agencies, international and regional organisations with Diplomatic accreditation or bilateral or multilateral agreements with Kenya for their official use.

[Act No. 15 of 2017, s. 10(b)(iii).]

5. Supply to the War Graves Commission

Taxable supplies including official vehicles, for the establishment and maintenance of war cemeteries by the Commonwealth War Graves Commission, but excluding office supplies and equipment and the property of the Commission's staff.

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

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

8. Supply to National Red Cross Society and St. John Ambulance

Taxable goods and services supplied or imported for official use in the provision of relief service.

[Act No. 15 of 2017, s. 10.]

9. Supply of protective apparel, clothing accessories and equipment

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 fire fighting.

PART C

Repealed by Act No. 2 of 2020, Sch.

Section 32 of No. 40 of 2013 which it is proposed to amend—

Appeals to the High Court on decisions of the Tribunal

32(1) A party to proceedings before the Tribunal may, within thirty days after being notified of the decision or within such further period as the High Court may allow, appeal to the High Court, and the party so appealing shall serve a copy of the notice of appeal on the other party.

(2) The High Court shall hear appeals made under this section in accordance with rules set out by the Chief Justice.

Section 10 of No. 23 of 2015 which it is proposed to amend—

Adjustment for inflation

10(1) Despite section 8, the Commissioner may, with the approval of the Cabinet Secretary, by notice in the Gazette, adjust the specific rate of excise duty once every year to take into account inflation in accordance with the formula specified in Part 1 of the First Schedule.

(2) The notice under subsection (1) shall be laid before the National Assembly within seven days from the date of publication.

(3) The National Assembly shall, within twenty-eight sitting days of the receipt of the notice under subsection (2), consider the notice and make a resolution either to approve or reject the notice.

(4) The notice shall cease to have effect, if a resolution disapproving the notice is passed by the National Assembly.

Section 11 of No. 23 of 2015 which it is proposed to amend—

Ex-factory selling price of excisable goods

11. The ex-factory selling price of excisable goods shall be—

- (a) if the excisable goods are sold by the manufacturer, other than to a purchaser in an arm's length transaction, the price payable by the purchaser; or
- (b) in any other case, the open market value of the goods at the time of removal from the manufacturer's factory.

Section 36 of No. 23 of 2015 which it is proposed to amend—

Payment of excise duty

(1) The excise duty payable by a licensed manufacturer in respect of excisable goods removed from a manufacturer's factory during a calendar month shall be paid not later than the twentieth day of the succeeding month.

(2) The excise duty payable by a supplier of excisable services in respect of supplies of excisable services made by the supplier during a calendar month shall be paid not later than the twentieth day of the succeeding month.

(3) The excise duty payable by an importer in respect of the importation of excisable goods into Kenya shall be paid to the Commissioner at the time of importation.

(4) For the purpose of assessing, collecting, accounting and enforcing the payment of excise duty on the importation of goods into

Kenya, the East African Community Customs Management Act, 2005 shall apply as if excise duty were customs duty.

(5) The Commissioner shall pay into the Sports, Arts and Social Development Fund established under the Public Finance Management Act, 2012 to support social development including universal health care sixteen percent of the excise duty paid in respect of money transfer by cellular phone service providers.

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

FIRST SCHEDULE

[Section 5(2), Act No. 38 of 2016, Act No. 11 of 2017, Sch., Act No. 15 of 2017, s. 5, Act No. 10 of 2018, s. 32, Act No. 23 of 2019, s. 26, Act No. 1 of 2020, s. 41, Act No. 2 of 2020, Sch., Act No. 8 of 2020, s. 17, Act No. 8 of 2021, s. 32.]

RATES OF EXCISE DUTY

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

Part I— EXCISABLE GOODS

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Rate</i>
2709.00.10	Condensates per 10001 @ 20degC	Shs. 6,225.00
2710.12.10	Motor Spirit (gasoline) regular per 10001 @ 20degC	Shs. 19,505.00
2710.12.20	Motor Spirit (gasoline) premium per 10001 @ 20degC	Shs. 19,895.00
2710.12.30	Aviation Spirit per 10001 @ 20degC	Shs. 19,895.00
2710.12.40	Spirit type Jet Fuel per 10001 @ 20degC	Shs. 19,895.00
2710.12.50	Special boiling point spirit and white spirit per 10001 @ 20degC	Shs. 8,500.00
2710.12.90	Other light oils and preparations per 10001 @ 20degC	Shs. 8,500.00
2710.19.10	Partly refined (including topped crude) per 10001 @ 20degC	Shs. 1,450.00
2710.19.21	Kerosene type Jet Fuel Per 10001 @ 20degC	Shs. 5,755.00

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Rate</i>
2710.19.22	Illuminating Kerosene per 10001 @ 20degC	Shs. 10,305.00
2710.19.29	Other medium oils and preparations per 10001 @ 20degC	Shs. 5,300.00
2710.19.31	Gas oil (automotive, light, amber for high speed engines) per 10001 @ 20degC	Shs. 10,305.00
2710.19.32	Diesel oil (industrial heavy, black, for low speed marine and stationery engines) per 10001 @ 20degC	Shs. 3,700.00
2710.19.39	Other gas oils per 10001 @ 20degC	Shs. 6,300.00
2710.19.41	Residual fuel oils (marine, furnace and similar fuel oils) of a Kinematic viscosity of 125 centistokes per 10001 @ 20degC	Shs. 300.00
2710.19.42	Residual fuel oils (marine, furnace and similar fuel oils) of a Kinematic viscosity of 180 centistokes Per 10001 @ 20degC	Shs. 600.00
2710.19.43	Residual fuel oils (marine, furnace and similar fuel oils) of a Kinematic viscosity of 280 centistokes per 10001 @ 20degC	Shs. 600.00
2710.19.49	Other residual fuels oils per 10001 @ 20degC	Shs. 600.00

<i>Description</i>	<i>Rate of Excise Duty</i>
Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter	Shs. 10 per litre
Food supplements	10%
Cosmetics and Beauty products of tariff heading No. 3303, 3304, 3305 and 3307	10%
Bottled or similarly packaged waters and other non-alcoholic beverages, not including fruit or vegetable juices	Shs. 5 per litre
Beer, Cider, Perry, Mead, Opaque beer and mixtures of fermented beverages with non-alcoholic beverages	Shs. 100 per litre

<i>Description</i>	<i>Rate of Excise Duty</i>
and spirituous beverages of alcoholic strength not exceeding 6%	
Powdered beer	Shs. 100 per kg
Wines including fortified wines, and other alcoholic beverages obtained by fermentation of fruits	Shs. 189 per litre
Spirits of undenatured ethyl alcohol; spirits liqueurs and other spirituous beverages of alcoholic strength exceeding 6%	Shs. 253 per litre
Cigars, cheroots, cigarillos, containing tobacco or tobacco substitutes	Shs. 12,624 per kg
Electronic cigarettes	Shs. 3,787 per unit
Cartridge for use in electronic cigarettes	Shs. 2,525 per unit
Cigarette with filters (Hinge lid and soft cap)	Shs. 3,157 per mille
Cigarettes without filters (plain cigarettes)	Shs. 2,272 per mille
Other manufactured tobacco and manufactured tobacco substitutes; "homogenous" and "reconstituted tobacco"; tobacco extracts and essences	Shs. 8,837 per kg
Motor vehicles of tariff heading 87.02, 87.03 and 87.04 excluding -(i) locally assembled motor vehicles;(ii) school buses for use by public schools;(iii) motor vehicles of tariff no. 8703.24.90 and 8703.33.90; and(iv) imported motor vehicles of cylinder capacity exceeding 1500cc	20%
Imported motor vehicles of cylinder capacity exceeding 1500 cc of tariff heading 87.02, 87.03 and 87.04	25%
Motor vehicles of tariff no. 8703.24.90 and 8703.33.90	35%

<i>Description</i>	<i>Rate of Excise Duty</i>
Motor cycles of tariff 87.11 other than motor cycle ambulances and locally assembled motor cycles	Shs. 10,000 per unit
100% electric powered motor vehicles of tariff no. 8702.40.11, 8702.40.19, 8702.40.21, 8702.40.22, 8702.40.29, 8702.40.91, 8702.40.99 and 87.03.80.00	10%
Imported sugar confectionary of tariff heading 17.04;	Shs. 35 per kg
White chocolate, chocolate in blocs, slabs or bars of tariff Nos. 1806.31.00, 1806.32.00, 1806.90.00	Shs. 200 per kg
Imported gas cylinders	35%
Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products) Provided that it shall not apply to glass bottles imported from any of the countries within the East African Community.	25%
Jewellery of tariff heading 7113 and imported jewellery of tariff heading 7117	10%
Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences	Shs. 1,200 per kg
Articles of plastic of tariff heading 3923.30.00	10%
Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared	20%
Imported furniture of any kind used in offices, kitchen, bedroom and other furniture of tariff number 9403	25%

<i>Description</i>	<i>Rate of Excise Duty</i>
Imported eggs of tariff heading 04.07	25%
Imported onions of tariff heading 07.03	25%
Imported potatoes, potato crisps and potato chips of tariff heading 07.01	25%
3907.91.00 unsaturated polyester	10%
3907.50.00 Alkyd	10%
3905.91.00 Emulsion VAM	10%
3903.20.00 Emulsion-styrene Acrylic	10%
3905.19.00 Homopolymers	10%
3906.90.00 Emulsion B.A.M	10%
Jewellery of tariff heading 7113 and imported jewellery of tariff heading 7117	10%
Products containing nicotine or nicotine substitutes intended for inhalation without combustion or oral application but excluding medicinal products approved by the Cabinet Secretary responsible for matters relating to health and other manufactured tobacco and manufactured tobacco substitutes that have been homogenized and reconstituted tobacco, tobacco extracts and essences	Shs. 1,200 per kg
Articles of plastic of tariff heading 3923.30.00	10%
Imported pasta of tariff 1902 whether cooked or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni, couscous, whether or not prepared	20%
Imported furniture of any kind used in offices, kitchen, bedroom and other furniture of tariff number	25%

<i>Description</i>	<i>Rate of Excise Duty</i>
9403	
Imported eggs of tariff heading 04.07	25%
Imported onions of tariff heading 07.03	25%
Imported potatoes, potato crisps and potato chips of tariff heading 07.01	25%
3907.91.00 unsaturated polyester	10%
3907.50.00 Alkyd	10%
3905.91.00 Emulsion VAM	10%
3903.20.00 Emulsion-styrene Acrylic	10%
3905.19.00 Homopolymers	10%
3906.90.00 Emulsion B . A . M	10%

[Act No. 38 of 2016, s. 24, Act No. 11 of 2017, Sch., Act No. 15 of 2017, s. 5(a) (i) & (ii), Act No. 10 of 2018, s. 32(a), Act No. 23 of 2019, s. 26, Act No. 1 of 2020, s. 41, Act No. 8 of 2020, s. 17(a), Act No. 8 of 2021, s. 32(a).]

2. (1) The specific rates of excise duty on excisable goods specified in this Schedule shall be adjusted for inflation at the beginning of every financial year in accordance with this paragraph.
- (2) Each rate of excise duty specified in the table in paragraph 1 shall be replaced by the rate of excise duty computed by reference to the following formula—

A(1+B)

where —

A is the rate of excise duty on the day immediately before the adjustment day; and

B is the adjustment factor for the adjustment day, calculated as the average rate of monthly inflation of the preceding financial year.

[Act No. 38 of 2016, s. 24(g), Act No. 15 of 2017, s. 5(a)(iii), Act No. 10 of 2018, s. 32(a).]

Part II — EXCISABLE SERVICES

1. Telephone and internet data services shall be charged excise duty at a rate of twenty percent of their excisable value.

[Act No. 10 of 2018, s. 32 (b)(i), Act No. 8 of 2021, s. 32 (b).]

2. Excise duty in fees charged for money transfer services by banks, money transfer agencies and other financial service providers shall be twenty percent of their excisable value.

[Act No. 10 of 2018, s. 32 (b)(ii).]

3. Excise duty on fees charged for money transfer services by cellular phone service providers, shall be twelve percent of their excisable value.

[Act No. 10 of 2018, s. 32 (b)(iii).]

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

[Act No. 10 of 2018, s. 32 (b)(iv).]

- 4A. Excise duty on betting shall be seven-point five per cent of the amount wagered or staked.

[Act No. 8 of 2021, s. 32 (c).]

- 4B. Excise duty on gaming shall be seven-point five percent of the amount wagered or staked.

[Act No. 8 of 2021, s. 32 (c).]

- 4C. Excise duty on prize competition shall be seven-point five percent of the amount paid or charged to participate in a prize competition.

[Act No. 8 of 2021, s. 32 (c).]

- 4D. Excise duty on lottery (excluding charitable lotteries) shall be seven-point five percent of the amount paid or charged to buy the lottery ticket.

[Act No. 8 of 2021, s. 32 (c).]

5. Deleted by Act No. 8 of 2020, s. 17(b). **Part III—
INTERPRETATION OF SCHEDULE**

In this Schedule—

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

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

“beer” includes ale, porter, and any other description of beer and any liquor, including beer substitute, which is produced as a result of the alcoholic fermentation of an extract derived from barley, malt, a cereal grain, starch or saccharine matter and hops or hops substitute, in potable water with other substitute ingredients and which contains more than two per centum of proof spirit, but does not include—

- (a) any beer brewed by any person for personal consumption and which is not offered for sale; or
- (b) any kind of beer that, by order of the Cabinet Secretary, is excluded from the provisions of this Act;

“cigar” means a cigar, cheroot or cigarillo prepared from tobacco or tobacco substitutes;

“cigarette” means —

- (a) rolls of tobacco capable of being smoked as they are and which are not cigars or cigarillos;
- (b) rolls of tobacco which, by simple non-industrial handling, are inserted into cigarette-paper tubes; or
- (c) rolls of tobacco that, by simple non-industrial handling, are wrapped in cigarette paper;

“cigarillos” means —

- (a) rolls of tobacco made entirely of natural tobacco; or
- (b) rolls of tobacco with an outer wrapper of natural tobacco;

“**electronic cigarettes**” means electronic nicotine delivery system whether or not containing tobacco or tobacco substitutes and includes electronic cigarette cartridges;

“**financial institution**” means —

- (a) a person licensed under—
 - (i) the Banking Act;
 - (ii) the Insurance Act;
 - (iii) the Central Bank of Kenya Act; or

- (iv) the Micro Finance Act, 2006;
- (b) a Sacco society registered under the Sacco Societies Act, 2008; or
- (c) the Kenya Post Office Savings Bank established the Kenya Post Office Savings Bank Act;

“financial year” means the period of twelve months ending on the 30th June of every year;

“other fees” includes any fees, charges or commissions charged by financial institutions relating to their licensed activities, but does not include interest on loan or return on loan or any share of profit or an insurance premium or premium based or related commissions specified in the Insurance Act or regulations made thereunder;

“inflation” means the average annual inflation rate in a financial year;

“money transfer services” includes services of sending and withdrawal of money;

“powdered beer” means any powder, crystals or any other dry substance which, after being mixed with water or any other nonalcoholic beverage, ferments to, or otherwise becomes an alcoholic beverage;

“proof” means a standard of strength of distilled alcoholic liquors (or of vinegar);

“proof spirit” means spirit that at a temperature of 10.55 degrees Centigrade weighs 12/13th of an equal volume of distilled water at the same temperature;

“rate of monthly inflation in each month” means the movement in the consumer price index number published by the Kenya National Bureau of Statistics for that month when compared to the same month in the preceding year;

“financial year” means the period of twelve months ending on the 30th June of every year;

“wine” means a liquor of a strength not exceeding 50 degrees of proof that is made from fruit and sugar or from fruit and sugar mixed with any other material and which has undergone a process of fermentation and includes mead.

[Act No. 11 of 2017, Sch., Act No. 23 of 2019, s. 26, Act No. 2 of 2020, Sch, Act No. 8 of 2021, s. 32 (d).]

Second Schedule of No. 23 of 2015 which it is proposed to amend—

SECOND SCHEDULE

[Section 7(1)(a), Act No. 38 of 2016, Act No. 15 of 2017, Act No. 10 of 2018, s. 33, Act No. 2 of 2020, Sch, Act No. 8 of 2021, s. 33.]

PART A — EXEMPT EXCISABLE GOODS

The following excisable goods shall be exempt from excise duty when purchased before clearance through Customs or removal from excise control—

1. Excisable goods that are *bona fide* stores for a ship or aircraft, being goods for use or consumption by passengers or crew of the ship or aircraft while on board and while the ship is in international traffic, and in such quantities as approved by the Commissioner.
2. Excisable goods imported into Kenya or purchased in Kenya by a diplomatic or consular mission, or by a diplomat or consul, or a member of the diplomat or consul's family forming part of the diplomat or consul's household in Kenya to the extent provided for under the Privileges and Immunities Act (Cap. 179).
3. Excisable goods imported into Kenya or purchased in Kenya by a foreign government, international organisation, or aid agency to the extent provided for under an international agreement or the Privileges and Immunities Act, 1970.
4. One motor vehicle for use by persons with disability:
Provided that exemption under this paragraph shall only apply once in every four years and upon payment of taxes on the previous vehicle.
5. Excisable Goods imported or Purchased locally by the Kenya Red Cross or St John Ambulance for official use in the provision of relief services in Kenya.

[Act No. 15 of 2017, s. 6(a).]

6. Excisable goods imported by a person changing residence or a returning resident subject to limitations provided for under the fifth schedule to the East African Community Management Act:

Provided that 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 whose current retail selling price shall not exceed that of the previously owned left-hand drive vehicle, subject to the following—

- (a) 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) proof of disposal (transfer of ownership) of the previously owned left hand drive vehicle before changing residence.

(c) *deleted by Act No. 15 of 2017, s. 6(b)(ii);*

(d) This proviso shall only apply to residents returning from countries that operate left hand drive motor vehicles.

[Act No. 15 of 2017, s. 6(b).]

7. Excisable goods imported by, and in the possession of a passenger subject to limitations provided for under the fifth schedule to the East African Community Management Act.

8. One motor vehicle previously owned and used by a deceased person outside Kenya subject to the conditions as the Commissioner may specify.

In this Part, “international agreement” means an agreement between the Government of Kenya and a foreign government, international organization, or aid agency for the provision of financial, technical, humanitarian, or administrative assistance to the Government of Kenya.9. Excisable goods imported or purchased locally for direct and exclusive use in the implementation of an Official Aid-Funded Project, to the extent provided for under the financing agreement.

[Act No. 38 of 2016, s. 25.]

10. Excisable goods imported or purchased locally for direct use in the manufacture of sanitary towels.

[Act No. 38 of 2016, s. 25, Act No. 15 of 2017, s. 6(c).]11. All goods including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and the National Police Service.

[Act No. 38 of 2016, s. 25.]

12. Alcoholic or non-alcoholic beverages supplied to the Kenya Defence Forces Canteen Organization.

[Act No. 10 of 2018, s. 33.]13. Illuminating kerosene supplies to licenced or registered manufacturers of paint, resin or shoe polish in such quantities as the Commissioner may approve.

[Act No. 2 of 2020, Sch., Act No. 8 of 2021, s. 33 (a).]

14. *Deleted by Act No. 2 of 2020, Sch.***PART B — EXEMPT EXCISABLE SERVICES**

1. The following excisable services shall be exempt from excise duty—

- (a) Excisable services supplied in Kenya to a diplomatic or consular mission or to a diplomat or consul, or a member of the diplomat or consul's family forming part of the diplomat or consul's household in Kenya to the extent provided for under the Privileges and Immunities Act (Cap. 179).
 - (b) Excisable services supplied in Kenya to a foreign government, international organisation, or aid agency to the extent provided for under an international agreement or the Privileges and Immunities Act (Cap. 179).
2. In this Part, "international agreement" means an agreement between the Government of Kenya and a foreign government, international organization, or aid agency for the provision of financial, technical, humanitarian, or administrative assistance to the Government of Kenya.
3. Excisable services supplied in Kenya by a mobile telecommunication service provider on the sale of a ring back tune to a subscriber.

[Act No. 8 of 2021, s. 33 (b).]

Section 9 of No. 29 of 2015 which it is proposed to amend—

Supply of information upon change in particulars

9. Every person carrying on a business shall, within thirty days of the occurrence of a change, notify the Commissioner of any changes—

- (a) in the place of business, trading name and registered address;
- (b) in the case of—
 - (i) an incorporated person, of the persons with share-holding of ten per cent or more of the issued share capital;
 - (ii) a nominee ownership, to disclose the beneficial owner of the shareholding;
 - (iii) a trust, the full identity and address details of trustees and beneficiaries of the trust;
 - (iv) a partnership, the identity and address of all partners; or
 - (v) cessation or sale of the business, all relevant information regarding liquidation or details of ownership.

Section 31 of No. 29 of 2015 which it is proposed to amend—

Amendment of assessments

31(1) Subject to this section, the Commissioner may amend an assessment (referred to in this section as the "original assessment") by making alterations or additions, from the available information and to the best of the Commissioner's judgement, to the original assessment of a taxpayer for a reporting period to ensure that—

- (a) in the case of a deficit carried forward under the Income Tax Act (Cap. 470), the taxpayer is assessed in respect of the correct amount of the deficit carried forward for the reporting period;
- (b) in the case of an excess amount of input tax under the Value Added Tax Act, 2013 (No. 35 of 2013), the taxpayer is assessed in respect of the correct amount of the excess input tax carried forward for the reporting period; or
- (c) in any other case, the taxpayer is liable for the correct amount of tax payable in respect of the reporting period to which the original assessment relates.

(2) A taxpayer who has made a self-assessment may apply to the Commissioner, within the period specified in subsection (4)(b)(i), to make an amendment to the taxpayer's self-assessment.

(3) Where an amended self-assessment return has been submitted under subsection (2), the Commissioner may accept or reject the amended self-assessment return and where he rejects, he shall furnish the taxpayer with the reasons for such rejection within thirty days of receiving the application.

(4) The Commissioner may amend an assessment—

- (a) in the case of gross or wilful neglect, evasion, or fraud by, or on behalf of, the taxpayer, at any time; or
- (b) in any other case, within five years of—
 - (i) for a self-assessment, the date that the self-assessment taxpayer submitted the self-assessment return to which the self-assessment relates; or
 - (ii) for any other assessment, the date the Commissioner notified the taxpayer of the assessment.

(5) Despite subsection (4)(b) (i) the Commissioner shall make an amended assessment on an application of a self-assessment taxpayer under subsection (2) if the application was submitted within the time specified in subsection (4)(b)(i).

(6) Where an assessment has been amended, the Commissioner may further amend the original assessment—

(a) five years after—

- (i) for a self-assessment, the date the taxpayer submitted the self-assessment return to which the self-assessment relates; or
- (ii) for any other assessment, the date the Commissioner served notice of the original assessment on the taxpayer; or

(b) one year after the Commissioner served notice of the amended assessment on the taxpayer, whichever is the later.

(7) In any case to which subsection (6)(b) applies, the Commissioner shall only amend the alterations or additions made in the amended assessment to the original assessment.

(8) When the Commissioner has made an amended assessment, he or she shall notify the taxpayer in writing of the amended assessment and specify—

- (a) the amount assessed as tax or the deficit or excess input tax carried forward, as the case may be;
- (b) any amount assessed as late payment penalty payable in respect of the tax assessed;
- (c) any amount of late payment interest payable in respect of the tax assessed;
- (d) the reporting period to which the assessment relates;
- (e) the due date for payment of any tax, penalty or interest being a date that is not less than thirty days from the date of the taxpayer received the notice; and
- (f) the manner of objecting to the assessment.

(9) Despite any notification to a taxpayer under this section, the due date for the payment of the tax payable under assessment (referred to as the “original due date”) shall not be altered and the late payment penalty and late payment interest shall also remain payable based on the original due date.

Section 40 of No. 29 of 2015 which it is proposed to amend—

Security on property for unpaid tax

40. (1) Where a taxpayer, being the owner of land or a building in Kenya, fails to pay a tax by the due date, the Commissioner may direct the Land Registrar in writing that the land or building, to the extent of the taxpayer's interest in the land or building, be the subject of a security for the unpaid tax specified in the notification to the Land Registrar:

Provided that the Commissioner shall notify the taxpayer in writing of the direction within seven days from the date of the notification to the Land Registrar.

(2) Where the Land Registrar has been notified by the Commissioner under subsection (1), the Land Registrar shall, without levying or charging a fee, register the Commissioner's direction as if it were an instrument of mortgage over, or charge on, as the case may be, the land or building of the taxpayer specified in the notice.

(3) A registration under subsection (2) shall, subject to any prior mortgage or a charge, operate as a legal mortgage over, or charge on, the land or building of the taxpayer to secure the amount of the unpaid tax and the provisions of the Land Registration Act relating to the rights of the mortgagee shall apply.

(4) The Commissioner shall, upon the payment of the whole of the amount of unpaid tax secured under this section, direct the Land Registrar in writing to cancel the direction made under subsection (2), and the Registrar shall, without levying or charging a fee, record the cancellation of the direction and the direction shall cease to apply.

Section 47 of No. 29 of 2015 which it is proposed to amend—

Refund of overpaid tax

47. (1) When a taxpayer has overpaid a tax under a tax law the taxpayer may apply to the Commissioner, in the approved form, for a refund of the overpaid tax within five years of the date on which the tax was paid.

Provided that for value added tax the period of refund shall be as provided for under the Value Added Tax Act, 2013 (No. 35 of 2013).

(2) The Commissioner may, for purposes of ascertaining the validity of the refund claimed, subject the claim to an audit.

(3) The Commissioner shall notify in writing an applicant under subsection (1) of the decision in relation to the application within ninety days of receiving the application for a refund.

(4) Where, in relation to an application for a refund made under this section or made under any other tax law, the Commissioner is satisfied that a taxpayer has overpaid a tax, the Commissioner shall apply the overpayment in the following order—

- (a) in payment of any other tax owing by the taxpayer under the tax law;

(b) in payment of a tax owing by the taxpayer under any other tax law; and

(c) any remainder shall be refunded to the taxpayer.

(4A) Where the Commissioner notifies a taxpayer that an application for a refund has been ascertained in accordance with subsection (3), and applies the refund to the payment of an outstanding tax in accordance with subsection (4)(a) or (b), interest or penalties shall not accrue on the amount applied to the payment of the outstanding tax from the date of the notification.

(4B) For the avoidance of doubt, where the Commissioner has applied a refund to the payment of an outstanding tax under subsection (4A), if there is any outstanding tax after such application, the outstanding tax shall accrue interest and penalties in accordance with this Act.

(4C) Without prejudice to the provisions of this section, once the Commissioner notifies of a decision under subsection (3) and the Commissioner is satisfied that there is an overpayment of tax, the overpaid tax shall be deemed to have been offset against the taxpayer's future tax liabilities.

(5) The Commissioner shall repay the overpaid tax within a period of two years from the date of application, failure to which the amount due shall attract an interest of 1% per month or part thereof of such unpaid amount after the period of two years.

Section 51 of No. 29 of 2015 which it is proposed to amend—

Objection to tax decision

51(1) A taxpayer who wishes to dispute a tax decision shall first lodge an objection against that tax decision under this section before proceeding under any other written law.

(2) A taxpayer who disputes a tax decision may lodge a notice of objection to the decision, in writing, with the Commissioner within thirty days of being notified of the decision.

(3) A notice of objection shall be treated as validly lodged by a taxpayer under subsection (2) if—

(a) the notice of objection states precisely the grounds of objection, the amendments required to be made to correct the decision, and the reasons for the amendments;

(b) in relation to an objection to an assessment, the taxpayer has paid the entire amount of tax due under the assessment that is not in

dispute or has applied for an extension of time to pay the tax not in dispute under section 33(1); and

- (c) all the relevant documents relating to the objection have been submitted.

(4) Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall immediately notify the taxpayer in writing that the objection has not been validly lodged.

(5) Where the tax decision to which a notice of objection relates is an amended assessment, the taxpayer may only object to the alterations and additions made to the original assessment.

(6) A taxpayer may apply in writing to the Commissioner for an extension of time to lodge a notice of objection.

(7) The Commissioner may allow an application for the extension of time to file a notice of objection if—

- (a) the taxpayer was prevented from lodging the notice of objection within the period specified in subsection (2) because of an absence from Kenya, sickness or other reasonable cause; and
- (b) the taxpayer did not unreasonably delay in lodging the notice of objection.

(8) Where a notice of objection has been validly lodged within time, the Commissioner shall consider the objection and decide either to allow the objection in whole or in part, or disallow it, and Commissioner's decision shall be referred to as an “objection decision”.

(9) The Commissioner shall notify in writing the taxpayer of the objection decision and shall take all necessary steps to give effect to the decision, including, in the case of an objection to an assessment, making an amended assessment.

(10) An objection decision shall include a statement of findings on the material facts and the reasons for the decision.

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

- (a) the notice of objection; or
- (b) any further information the Commissioner may require from the taxpayer,

failure to which the objection shall be deemed to be allowed.

First Schedule of No. 29 of 2015 which it is proposed to amend—

FIRST SCHEDULE

TRANSACTIONS FOR WHICH A PIN IS REQUIRED

[Section 12, Act No. 23 of 2019, s. 35, Act No. 8 of 2021, s. 48.]

- (1) Registration of titles and stamping of instruments.
- (2) Approval of development plans and payment of water deposits.
- (3) Registration of motor vehicles, transfer of motor vehicles, and licensing of motor vehicles.
- (4) Registration of business names.
- (5) Registration of companies.
- (6) Underwriting of insurance policies.
- (7) Trade licensing.
- (8) Importation of goods and customs clearing and forwarding.
- (9) Payment of deposits for power connections.
- (10) All contracts for the supply of goods and services to Government Ministries and public bodies.
- (11) Opening accounts with financial institutions and investment banks.
- (12) Registration and renewal of membership by professional bodies and other licensing agencies.
- (13) Registration of mobile cellular pay bill and till numbers by telecommunication operators.
- (14) Carrying out business over the internet or an electronic network including through a digital marketplace.

Section 9B of No. 29 of 2016 which it is proposed to amend—

Application of Tax Procedures Act, 2015 to excess tax refunds

The provisions of section 47 of the Tax Procedures Act, 2015 shall apply for the purposes of—

- (a) an application for refunds, ascertainment and repayment of fees and levies overpaid or paid in error under this Act; or
- (b) the determination by the Commissioner of penalties and interests on fees that remain unpaid.

*First Schedule of No. 29 of 2016 which it is proposed to amend—***FIRST SCHEDULE****GOODS SUBJECT TO EXPORT LEVY**

[Section 5(1), Act No. 15 of 2017, s. 58.]

PART I

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Export Levy Rate</i>
4101.20.00	Whole hides and skins, of a weight per skin not exceeding 8 kg. when simply dried, 10 kg. when dry-salted, or 16 kg. when fresh, wet-salted or otherwise preserved.	80% or USD 0.52 per kg.
4102.21.00	Raw skins of sheep or lambs (pickled, but not tanned, parchment-dressed or further prepared), without wool on whether or not split, other than those excluded by Note 1(c) to Chapter 41.	80% or USD 0.52 per kg.
4102.29.00	Other raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note (c) to Chapter 41.	80% or USD 0.52 per kg.
4103.20.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not debarred or split, other than those excluded by Note 1 (b) or (c) to this Chapter, of reptiles.	80% or USD 0.52 per kg.
4103.30.00	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), but not debarred or split, other than those excluded by Note 1 (b) or 1 (c) to this Chapter, of swine.	80% or USD 0.52 per kg.
4103.90.00	Other raw hides and skins other than of	80% or USD 0.52

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Export Levy Rate</i>
	reptiles, swine, goats or kids.	per kg.
4104.19.00	Other tanned or crust hides and skins of bovine (including buffalo) or equine animals, without hair on, whether or not split, but not further prepared, in the wet state (including wet - blue).	80% or USD 0.52 per kg.
4301.60.00	Raw furskins of fox, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.
4101.40.00	Hides and skins of equine animals.	80% or USD 0.52 per kg.
4101.50.00	Whole hides and skins, of weight exceeding 16 kg.	80% or USD 0.52 per kg.
4101.90.00	Other, including butts, bends and bellies.	80% or USD 0.52 per kg.
4102.10.00	Raw skins of sheep or lamb (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), with wool on, whether or not split, other than those excluded by Note 1(c) to Chapter 41.	80% or USD 0.52 per kg.
4301.10.00	Raw furskins of mink, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.
4301.30.00	Raw furskins of lamb, the following: Astrkhan, broadtail, Caracul, Persian and similar lamb, Indian, Chinese, Mongolian or Tibetan lamb, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.
4301.80.00	Other raw furskins, whole, with or without head, tail or paws.	80% or USD 0.52 per kg.
4301.90.00	Heads, tail, paws, and other pieces or cuttings, suitable for furriers' use.	80% or USD 0.52 per kg.
4302.11.00	Whole skins, with or without head, tail or paws, not assembled, of mink.	80% or USD 0.52 per kg.
4302.19.00	Other whole skins, with or without head, tail or paws, not assembled.	80% or USD 0.52 per kg.
4302.20.00	Heads, tails, paws and other pieces or	80% or USD 0.52

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Export Levy Rate</i>
	cuttings, not assembled.	per kg.
4302.30.00	Whole skins and pieces or cuttings thereof, assembled.	80% or USD 0.52 per kg.
7112.30.00	Waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious metal or precious metal compounds of a kind used principally for the recovery of precious metal of ash containing precious metal or precious metal compounds.	20%
7112.91.00	Other waste and scrap of precious metal or precious metal compounds of a kind used principally for the recovery of precious metal of gold including metal clad with gold.	20%
7112.92.00	Other waste and scraps of precious metal or precious metal compounds of a kind used principally for the recovery of precious metal of platinum, including metal clad with platinum.	20%
7112.99.00	Other waste and scrap of precious metal or metal clad with precious metal, other waste and scrap containing precious metal compounds, of a kind used principally for the recovery of precious metal.	20%
7204.10.00	Waste and scrap of cast of iron.	20%
7204.29.00	Waste and scrap of other alloy or steel.	20%
7204.30.00	Waste and scrap of tinned iron steel.	20%
7204.41.00	Turnings, shavings, chips, milling waste, sawdust, fillings, trimmings and stampings, whether or not in bundles, or iron or steel.	20%
7204.49.00	Other waste and scrap of iron or steel	20%
7204.50.00	Remelting scrap ingots	20%
7205.10.00	Granules of pig iron, spiegeleisen, iron	20%

<i>Tariff No.</i>	<i>Tariff Description</i>	<i>Export Levy Rate</i>
	or steel.	
7902.00.00	Zinc waste and scrap.	20%
8002.00.10	Tin waste and scrap.	20%
8102.94.00	Unwrought molybdenum including bars and rods obtained simply by sintering; waste and scrap.	20%
8102.97.00	Waste and scrap of molybdenum	20%
8103.30.00	Waste and scrap of tantalum	20%
8104.20.00	Waste of scrap of magnesium	20%
8105.00.00	Bismuth and articles thereof including waste and scrap.	20%
8105.30.00	Waste and scrap of cobalt matters.	20%
8107.30.00	Waste and scrap of cadmium.	20%
8108.30.00	Waste and scrap of titanium.	20%
8109.30.00	Waste and scrap of zirconium.	20%
8110.20.20	Waste and scrap of antimony.	20%
8112.13.00	Waste and scrap of beryllium.	20%
8112.22.00	Waste and scrap of chromium.	20%
8112.52.00	Waste and scrap of thallium.	20%
8112.92.00	Unwrought waste and scrap; powders.	20%

PART II

Part I shall not apply to exports to Export Processing Zones or Special Economic Zones.

[Act No. 15 of 2017, s. 58.]

PART III

[Section 5(4)]

(1) The specific rates of export levy on goods specified in Part I of this schedule shall be adjusted for inflation at the beginning of every financial year in accordance with this paragraph.

(2) Each rate of export levy specified in column 3 of the table in Part I of this schedule shall be replaced by the rate of export levy computed by reference to the following formula—

$A \times B$

Where—

A is the rate of export levy on the day immediately before the adjustment day; and

B is the adjustment factor for the adjustment day calculated as one plus annual average rate of inflation of the preceding financial year.

(3) For the purpose of this Part—

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

“inflation” means the average annual inflation rate in a financial year;

“financial year” means the period of 12 months ending on 30th June of every year.

Second Schedule of No. 29 of 2016 which it is proposed to amend—

SECOND SCHEDULE

GOODS EXEMPT FROM IMPORT DECLARATION FEE AND RAILWAY DEVELOPMENT LEVY

[Section 7(3)(a), Act No. 11 of 2017, Sch., Act No. 15 of 2017, s. 59, Act No. 10 of 2018, s. 51, Act No. 1 of 2020, ss. 42 & 43, Act No. 2 of 2020, Sch., Act No. 8 of 2020, s. 22, Act No. 8 of 2021, s. 51.]

PART A

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

The following goods are exempt from payment of import declaration fee when imported or purchased before clearance through customs—

- (i) goods destined for approved duty free shops;
- (ii) goods destined for approved Export Processing Zones or Special Economic Zones enterprises;
- (iii) goods destined for approved enterprises manufacturing under bond;
- (iv) accompanied or unaccompanied used personal effects;
- (v) ammunition, weapons or implements of war imported by the Government;
- (vi) household and personal effects including motor vehicles, provided such motor vehicles qualify for exemption from duty under the Fifth Schedule to the East African Community Customs Management Act, 2004;
- (vii) posted parcels, excluding goods imported for trade;
- (viii) deleted by Act No. 2 of 2020, Sch.;
- (ix) deleted by Act No. 2 of 2020, Sch.;
- (x) gifts and supplies for diplomatic and consular missions and to the United Nations Missions;
- (xi) goods destined for official aid-funded projects;
- (xii) currency notes and coins of current issues imported by the Central Bank of Kenya or by a financial institution with the approval of the Central Bank of Kenya; postage, revenue and excise stamps;

- (xiii) explosive and pyrotechnic products imported by the Government;
- (xiv) gifts by foreign Governments or international organizations to charities and foundations;
- (xv) aircraft, excluding aircraft of unladen weight not exceeding 2,000kg and helicopters of heading 8802.11.00 and 8802.12.00.
- (xvi) aircraft catering stores for use in an aircraft owned and operated by a designated airline;
- (xvii) currency notes, coins, travellers cheques and bullion;
- (xviii) rail locomotives, wagons (86.0 to 86.06) and rail containers (86.09);
- (xix) ships weighing 250 tonnes or more;
- (xx) goods from the East African Community Partner States that meets the East African Community Rules of origin;
- (xxi) deleted by Act No. 2 of 2020, Sch.;
- (xxia) deleted by Act No. 2 of 2020, Sch.;
- (xxib) goods imported or purchased for the construction of bulk storage facilities for supporting the Standard Gauge Railway operations with a minimum storage capacity of one hundred thousand metric tonnes of supplies as approved by the Cabinet Secretary responsible for transport;
- (xxii) deleted by Act No. 8 of 2020, s. 22(a)(ii);
- (xxiii) deleted by Act No. 8 of 2020, s. 22(a)(iii);
- (xxv) equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.
- (xxvi) such other goods the exemption of which the Cabinet Secretary may determine is in the public interest, or to promote investment and the value of which shall not be less than five billion shillings.

PART B

[Section 8(6)]

GOODS EXEMPT FROM THE RAILWAY DEVELOPMENT LEVY WHEN IMPORTED OR PURCHASED BEFORE CLEARANCE THROUGH CUSTOMS

The railway development levy shall not apply to goods imported or purchased before clearance through customs—

- (i) for the implementation of an official aid funded project;
- (ii) for official use by a diplomatic mission, institution or organization gazetted under the Privileges and Immunities Act (Cap. 179);
- (iii) by the United Nations or its agencies;
- (iv) from the East African Community Partner States provided that they meet the East African Community Rules of origin;
- (v) deleted by Act No. 2 of 2020, Sch.;
- (va) deleted by Act No. 2 of 2020, Sch.;
- (vb) goods imported or purchased for the construction of bulk storage facilities for supporting the Standard Gauge Railway operations with a minimum storage capacity of one hundred thousand metric tonnes of supplies as approved by the Cabinet Secretary responsible for transport;
- (vi) deleted by Act No. 8 of 2020, s. 22(b)(i);
- (vii) deleted by Act No. 2 of 2020, Sch.;
- (viii) currency notes and coins imported by the Central Bank of Kenya;
- (ix) equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and National Police Service.
- (x) such other goods the exemption of which the Cabinet Secretary may determine is in the public interest, or to promote investment and the value of which shall not be less than five billion shillings.

Section 133 of Cap. 80 which it is proposed to amend—

133. Privilege relating to information of commission of offences

(1) No judge, magistrate or police officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the law relating to the public revenue or to income tax, customs or excise.

(2) For the purposes of this section, “revenue officer” means any officer employed in or about the business of any branch of the public revenue, including any branch of the income tax, customs or excise departments.

Section 2 of Cap 485A which it is proposed to amend—

“investment adviser” means any person (other than a bona fide officer, director, trustee, member of an advisory board or employee of a company as such) who, for remuneration—

- (1) carries on the business of advising others concerning securities; or
- (2) as part of a regular business, issues or promulgates analyses or reports concerning securities; or
- (3) pursuant to a contract or arrangement with a client, undertakes on behalf of the client (whether on a discretionary authority granted by the client or otherwise), the management of a portfolio of securities for the purpose of investment, where the total portfolio does not exceed the amount prescribed by the Authority from time to time; or
- (4)...

Section 29 of Cap 485A which it is proposed to amend—

29. Licensing requirements

(1) Before granting any licence or approval, the Authority in respect of a business that requires to be licensed or approved shall satisfy itself—

(a) that the applicant is a company incorporated under the Companies Act (Cap. 486), with such minimum share capital as the Authority may prescribe or is duly constituted as a collective investment scheme;

(b) deleted by Act No. 35 of 2012, s. 7;

(c) that at least one director and at least one employee who is the chief executive of the applicant company, have satisfied such minimum qualification requirements as may be prescribed;

Section 10 of Cap 487 which it is proposed to amend—

10. Particular powers of Commissioner with regard to long term insurance business

(4) An insurer who, upon an investigation ordered under subsection (3)(a) is found to have disposed of any assets from a closed fund contrary to the provisions of section 21, or to have misappropriated such assets, commits an offence and is liable on conviction, to a fine not exceeding one hundred thousand shillings or, where the insurer is a natural person to imprisonment for a term not exceeding five years, or to both.

(8) In this section the expression “closed fund” means a closed fund within the meaning of section 21.

Section 33 of No. 40 of 2011 which it is proposed to amend—

33. Failure to pay or deliver assets and penalties

(6) A penalty payable under subsections (1), (4) and (5) of this section shall be recoverable as civil debt summarily.

Section 13 of No. 8 of 2015 which it is proposed to amend—

13. Funds for expenses

(1) An entitled person, or his surviving spouse, as the case may be, shall, at least five months before the commencement of each financial year, submit estimates of all the expenditure required in respect of the benefits to which he is entitled under this Act for that year, to the Cabinet Secretary responsible for finance for approval.

(2) Upon approval of the estimates submitted under subsection (1), all monies, from time to time, required in respect of the benefits conferred on an entitled person or his surviving spouse by this Act shall be charged on and issued out of the Consolidated Fund without further appropriation than this Act.

(3) All other expenses incurred in the administration of the provisions of this Act shall be met out of monies appropriated by the National Assembly for that purpose.

