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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – SECOND SESSION – 2023
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON THE CONSIDERATION OF THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 14 OF
2023)

	
THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 13 JUN 2023	DAY: Tuesday
TABLED BY:	Hon. Kenya Kimani (Chairperson, Finance and National Planning Committee)
CLERK-AT THE TABLE:	Inez Mwakali

CLERKS CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

JUNE, 2023

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LIST OF ABBREVIATIONS AND ACRONYMS

ITA	~	Income Tax Act
VAT	~	Value Added Tax
WHT	~	Withholding Tax
EDA	~	Excise Duty Act
KRA	~	Kenya Revenue Authority
CGT	~	Capital Gains Tax
MFIs	~	Microfinance Institutions
EBITDA	~	Earnings before Interest, Taxes, Depreciation and Amortization
EACCMA	~	East African Community Customs Management Act
COVID	~	Corona Virus Disease
ADR	~	Alternative Dispute Resolution
TAT	~	Tax Appeals Tribunal
EAC	~	East African Community
TPA	~	Tax Procedures Act
TOGC	~	Transfer of Business as a Going Concern
HS Code	~	Harmonized System Code
DST	~	Digital Service Tax
NSE	~	Nairobi Securities Exchange
PIN	~	Personal Identification Number
CS	~	Cabinet Secretary
FDI	~	Foreign Direct Investment
LPG	~	Liquefied Petroleum Gas
PFMA	~	Public Finance Management Act
B2B	~	Business to Business
B2C	~	Business to Customer
CBK	~	Central Bank of Kenya
OECD	~	Organization for Economic Co-operation and Development
CMA	~	Capital Markets Authority

LIST OF ANNEXURES

1. Adoption Schedule
2. Minutes of the Committee
3. Copy News Paper Advert
4. Letter Inviting Stakeholders for a Meeting

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Finance and National Planning on its consideration of the Finance Bill (*National Assembly Bill No. 14 of 2023*) which was published on 28th April, 2023.

The Bill went through the First Reading on 4th May, 2023 and was thereafter committed to the Departmental Committee on Finance and National Planning for consideration and reporting to the House pursuant to the provision of Standing Order 127.

The Bill has eighty-four (84) clauses and seeks to amend the following laws: the Income Tax Act (Cap. 470); the Value Added Tax Act (No. 35 of 2013); the Tax Appeals Tribunal Act (No. 40 of 2013); the Excise Duty Act (No. 23 of 2015); the Tax Procedures Act (No. 29 of 2015); the Miscellaneous Fees and Levies Act (No. 29 of 2016); the Unclaimed Financial Assets Act (No. 40 of 2011); the Statutory Instruments Act (No. 23 of 2013); the Betting, Gaming and Lotteries Act (Cap.131), the Kenya Roads Board Act, 1999, the Kenya Revenue Authority Act, 1995, the Employment Act, 2007 and the Retirement Benefits (Deputy President and Designated State Officers) Act (No. 8 of 2015)

The amendments proposed to the above laws provide a raft of tax policy measures that aim at yielding additional revenue of KSh 211 billion for the Fiscal Year 2023/24 which is part of the KSh. 2.571 trillion projected revenues for the said year. It further presents an opportunity for the Government to accelerate the implementation of key projects under the Bottom-Up Economic Transformation Agenda (BETA) through rationalized tax policies and fiscal consolidation framework through amendment of statutes that will help fast track the realization of this medium-term agenda (boost manufacturing activities, enhance food security, achieve Universal Healthcare and support the construction of at least 50,000 affordable Houses) which are fundamental to improving livelihoods of the public.

Following the placement of adverts in the print media on 7th and 8th May 2023 requesting comments on the Bill from members of the public and relevant stakeholders pursuant to Article 118(1) (b) of the Constitution and Standing Order 127(3), the Committee received memoranda from one thousand and eighty (1080) stakeholders.

The Committee in line with the requirements of Article 114 of the Constitution invited stakeholders vide letter vide letters REF: NA/DDC/F&NP/2023/45 dated 18th May 2022 and REF: NA/DDC/F&NP/2023/53 dated 26th May 2023 for a stakeholders' engagement retreat on the Bill which was held at Hilton Garden Inn Hotel from 22nd – 29th May 2023 with one hundred thirty-three (133) stakeholders making oral presentations before the Committee. Further, the Committee conducted Public Hearings on 31st May, 2023 in KICC. The Committee also held a meeting with the National Treasury and the Kenya Revenue Authority.

The majority of the stakeholders were opposed to the amendment proposing that a taxpayer deposits twenty percent (20%) of the disputed amount with the Commissioner for cases determined by the Tax Appeals Tribunal and ruled in favor of KRA before filing an appeal in the High Court. They observed that the proposed amendment will increase the cost of doing business in the country hence making Kenya an unattractive business environment. It will also deny the taxpayers justice contrary to Article 48 of the

Constitution where the taxpayer is not able to raise the required amount. The proposal to increase the VAT on petroleum products from eight percent (8%) to sixteen percent (16%) was also not supported by most stakeholders because it has the potential to further increase the cost of living for common 'mwanaanchi'.

In considering the Bill, the Committee observed that the amount of revenue that was expected to be realized through this Finance Bill was higher than that raised in the previous Finance Bills. Some of the proposals in the Bill like those increasing WHT on betting from 7.5% to 20%, TOT from 1% to 3% while expanding the its band to be between Kshs 500,000 to Kshs 50 million and tax amnesty offered among others very ambitious but had the potential of broadening the tax base and leading to higher revenue collection.

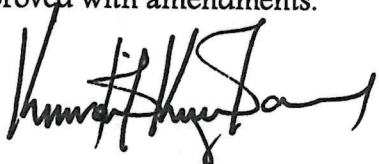
However, the Committee notes that some of the proposals for instance increase in WHT on Betting from 7.5% to 20%, if enacted, may not necessarily lead to higher revenue collection as people may resort to betting in offshore companies. It was sad to note that some of the amendments proposed more on VAT Exemption and Zero rating in the Bill had been made in the Finance Act, 2022 and they were being revised barely six months after implementation. The Committee was of the opinion that the Government should put in place a national tax policy which will create a predictable tax environment and attract investment in Kenya hence increase revenue collection.

The Bill introduces new provisions that obligates one to remit WHT within twenty-four (24) hours as opposed to the current fifty (50) days. However, while stakeholders raised opposition to this provision, the Committee was of the view that twenty four (24) hours may not be practical but there is need to ensure WHT is remitted as soon as payment are made.

On a more encouraging note, the Committee observed that the number of individual citizens and corporates who had submitted memoranda on the Bill was phenomenally higher than the previous years, an indication that Kenyans are taking interest in legislation. The Committee lauded this noting that it will improve the quality of legislation as the opinions of the common 'mwanaanchi' will be put into consideration when making laws.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honor to present to this House the Report of the Committee on its consideration of the Finance Bill (*N.A. Bill No. 14 of 2023*). The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee further wishes to thank all stakeholders who submitted their comments on the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee and the Committee Secretariat who made useful contributions towards the preparation and production of this report.

It is my pleasure to report that the Committee has considered the Finance Bill (*N.A. Bill No. 14 of 2023*) and have the honor to report back to the National Assembly with the recommendation that the Bill be approved with amendments.



Hon. CPA Kuria Kimani, M.P.

Chairperson, Departmental Committee on Finance and National Planning 2023

THE NATIONAL ASSEMBLY PAPERS LAID	
DAY: Tuesday	
TABLED BY:	Hon. Kuria Kimani (Chairperson, Finance and National Planning Committee)
CLERK-AT-THE-TABLE:	Inzafu Mwale

PART ONE

1. PREFACE

1.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance and National Planning is one of the fifteen Departmental Committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
 - i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
 - ii. *To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;*
 - iii. ***To study and review all the legislation referred to it;***
 - iv. *To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - v. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on appointments);*
 - vii. *To examine treaties, agreements and conventions;*
 - viii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - ix. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - x. *To examine any questions raised by Members on a matter within its mandate.*

1.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.
3. In executing its mandate, the Committee oversees the following government Ministries and departments:
 - i. National Treasury and Planning
 - ii. Commission on Revenue Allocation
 - iii. Office of the Controller of Budget

1.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning comprises the following Members:

Chairperson

Hon. CPA Kuria Kimani, MP
Molo Constituency

UDA Party

Vice-Chairperson

Hon. Amb. Benjamin Langat, CBS, MP
Ainamoi Constituency

UDA Party

Hon. Dr. Adan Keynan, CBS, MP
Eldas Constituency
Jubilee Party

Hon Andrew Adipo Okuome, MP
Karachuonyo Constituency
ODM Party

Hon. David Mwalika Mboni, MP
Kitui Rural Constituency
Wiper Party

Hon. Joseph M. Oyula, MP
Butula Constituency
ODM Party

Hon. Joseph Kipkoros Makilap, MP
Baringo North Constituency
UDA Party

Hon. Umul Ker Kassim, MP
Mandera County
UDM Party

Hon. CPA Julius Rutto, MP
Kesses Constituency
UDA Party

Hon. Shadrack Ithinji, MP
South Imenti Constituency
Jubilee Party

Hon. Paul Biego, MP
Chesumei Constituency
UDA Party

Hon. Joseph Munyoro, MP
Kigumo Constituency
UDA Party

Hon. Dr. John Ariko, MP
Turkana South Constituency
ODM Party

Hon. Mohamed Soud Machele, MP
Mvita Constituency
ODM Party

Hon. George Sunkuiya, MP
Kajiado West Constituency
UDA Party

1.4 COMMITTEE SECRETARIAT

5. The Committee is facilitated by the following staff

Mr. Benjamin Magut
Senior Clerk Assistant /Head of Secretariat

Ms. Jennifer Ndeto
Deputy Director, Legal Service

Mr. Joshua Ondari
Clerk Assistant

Mr. Nebert Ekai
Clerk Assistant

Mr. Benson Kamande
Clerk Assistant

Mr. Salem Lorot
Legal Counsel

Mr. George Ndenjeshe
Fiscal Analyst

Mr. Chelanga Maiyo
Principal Research Officer

Ms. Terry Ondiko
Fiscal Analyst

Mr. Andrew Jumanne Shangarai
Principal Serjeant-At-Arms

Mr. Simon Ouko
Assistant Serjeant-At-Arms

Ms. Shamsa A. Abdi
Research Officer

Ms. Nelly W.N Ondieki
Research Officer

Ms. Joyce Wachera
Hansard Officer III

Mr. James Macharia
Media Relations Officer

6. Further, the Committee Secretariat was supported by the following technical officers

- | | | |
|------|-----------------------|--|
| i. | Dr. Martin M. Masinde | - Director, Parliamentary Budget Office |
| ii. | Dr. Robert Nyaga | - Deputy Director, Parliamentary Budget Office |
| iii. | Mr. Mabuti Mutua | - Legal Counsel |
| iv. | Ms. Penina Simiren | - Legal Counsel |

PART TWO

2 OVERVIEW OF THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 14 OF 2023)

2.1 INTRODUCTION

7. A finance Bill is an annual Bill that is enacted mainly to facilitate revenue collection by the National Government based on the approved annual Budget Policy Statement and the Budget Estimates.
8. Section 40(3) of the Public Finance Management Act, 2012 provides that the Cabinet Secretary shall submit to Parliament the Finance Bill, setting out the revenue-raising measures for the National Government together with a policy statement expounding on these measures
9. The Cabinet Secretary responsible for the National Treasury presented the Budget Policy Highlights for the Fiscal Year 2023/24 on 14th February 2023 with the theme of *the bottom – up economic transformation agenda for inclusive growth*. Further, the Cabinet Secretary on 28th April, 2023 submitted the revenue-raising measures to finance the government's approved expenditure for the period 1st July 2023 to 30th June 2024.
10. The Finance Bill, 2023 provides a raft of tax policy measures that aim to yield additional revenue of KSh. 211 billion for the Fiscal Year 2023/24 which is part of the KSh. 2,571.6 billion projected revenues for the said year. It further presents an opportunity for the Government to accelerate implementation of key projects under the '*bottom-up economic transformation agenda for inclusive growth*' through rationalized tax policies and fiscal consolidation framework through amendment of statutes that will help fast track the realization of this medium-term agenda (boost manufacturing activities, enhance food security, achieve Universal Healthcare and support construction of at least 50,000 affordable Houses) which are fundamental to improving livelihoods of the public.
11. The Finance Bill, 2023 proposes amendments to the following tax laws to enhance efficiency and administration in national revenue mobilization:
 - i. the Income Tax Act (Cap. 470);
 - ii. the Value Added Tax Act (No. 35 of 2013);
 - iii. the Tax Appeals Tribunal Act (No. 40 of 2013);
 - iv. the Excise Duty Act (No. 23 of 2015);
 - v. the Tax Procedures Act (No. 29 of 2015);
 - vi. the Miscellaneous Fees and Levies Act (No. 29 of 2016);
 - vii. the Employment Act (Cap. 80);
 - viii. the Betting, Gaming and Lotteries Act (Cap. 131);
 - ix. the Kenya Roads Board Act, 1999 (No.7 of 1999)
 - x. the Kenya Revenue Authority Act, 1995 (No. 2 of 1995)
 - xi. the Unclaimed Financial Assets Act (No. 40 of 2011);
 - xii. the Statutory Instruments Act (No. 23 of 2013); and
 - xiii. the Retirement Benefits (Deputy President and Designated State Officers) Act (No. 8 of 2015).

12. It is important to note that the proposed changes to tax laws in the Finance Bill, 2023 have different effective dates and shall come into operation in accordance with the provisions of clause 1 of the Bill.

2.2 REVIEW OF THE BILL

The Bill has eighty-four (84) clauses and proposes amendments to the following statutes:

13. **Clauses 2 to 27** of the Bill propose to amend **the Income Tax Act (Cap. 470)**. Some of the proposed amendments include:

- i. Amendment of **Section 2** of the Act to amend the definition of “winnings” and insert new definitions of “digital content monetization”, “immovable property”, “person”, and “related person”.
- ii. Amendment of **Section 4A** of the Act, which relates to income from businesses where foreign exchange loss or gain may be realized, to provide that foreign exchange loss shall be deferred and claimed over a period of not more than three years from the date the loss was realized by a company whose gross interest paid or payable to a non-resident person exceeds 30% of the company’s earnings before interest, taxes, depreciation and amortization in any year of income.
- iii. Amendment of **Section 5** of the Act on income from employment, to provide that club entrance and subscription fees disallowed against the employer’s income, shall be deemed as gains or profits, among other amendments.
- iv. Amendment by insertion of **Section 7B** to include tax payable on the repatriated income.
- v. Amendment of **Section 12C** to provide for a charge annual turnover for businesses with a turnover of KSh. 500,000 but does not exceed fifteen million.
- vi. Amendment by insertion of **Section 12F** to introduce the Digital Asset Tax payable by a person on income derived from the transfer or exchange of digital assets.

Amendment of the **First Schedule**

- i. To provide tax exemption for royalties paid to a non-resident person by a company undertaking the manufacture of human vaccines,
- ii. To provide interest paid to a resident person or non-resident person by a company undertaking the manufacture of human vaccines,
- iii. To provide for investment income from a post-retirement medical fund, and payment in the form of funds transfer from a post-retirement medical fund to a medical insurance cover provider.

Amendment of the **Second Schedule**

- i. To provide for the investment allowance at the rate of 10% Industrial building and Dock and provide clarity on the definition of ‘civil works’

Amendment of the **Third Schedule**

- i. To provide for post-retirement medical fund relief at 15% of the amount contributed or KSh 60,000 per annum, whichever is lower.
- ii. To provide adjustment of rates of tax as follows; 10% on the first Ksh. 288,000, 25% on the next KSh. 100,000, 30% on the next KSh. 5,612,000 and 35% on all income over KSh. 6,000,000
- iii. To increase the turnover tax from 1% of the gross receipts to 3%
- iv. To decrease the rate of residential rental income from 10% to 7.5%

Amendment of the **Fourth Schedule**

- i. To include Mortgage refinance companies licensed under the Central Bank of Kenya Act among the financial institutions.

Amendment of the **Eighth Schedule**

- i. To provide for the taxation of gains
- ii. To provide for the due date for tax payable under this clause
- iii. To provide the time period of existence of a property involved in transfer in cases of internal restructuring
- vii. Amendment of the **Ninth Schedule** to the Act increases the notification to the Commissioner on the change in the underlying ownership of a licensee or contractor from 10% to 20%, among other proposed amendments.

14. **Clauses 28 to 34** of the Bill propose amendments to **the Value Added Tax Act (No. 35 of 2013)**. The Bill proposes to amend the Act as follows:

- i. To provide an exemption from VAT of liquefied petroleum gas including propane, aviation spirit and Natural gas in gaseous state, among others.
- ii. To provide an exemption of pharmaceutical substances for retail sale for medical, surgical, dental or veterinary purposes.
- iii. To provide exemption on inputs or raw materials supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, agricultural pest control products, transportation of sugarcane from farms to milling factories, and all tea sold for the purpose of value addition before exportation.

- iv. To remove from exemption taxable goods for direct and exclusive use for the construction of tourism facilities, recreational parks of fifty acres or more and convention and conference facilities.
- v. To remove from the exemption plant, machinery and equipment used in the construction of a plastics recycling plant, among other proposed amendments
- vi. To remove from the zero-rated list inputs or raw materials (either produced locally or imported) supplied to pharmaceutical manufacturers in Kenya for manufacturing medicaments, inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products and agricultural pest control products. Others are the supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than 10% percent in weight, transportation of sugarcane from farms to milling factories, exportation of taxable services in respect of business process outsourcing, fertilizers of Chapter 31, inputs or raw materials locally purchased or imported by manufacturers of fertilizer. Included in the zero-rated list is inbound international sea freight offered by a registered person.

15. **Clause 30** the Bill proposes to amend **the Tax Appeals Tribunal Act (No. 40 of 2013)** to streamline the process and timelines of resolving disputes and settling disputes out of the Tax Appeals Tribunal. To require a party who is aggrieved by a tax decision to pay a deposit of at least 20% of the disputed tax before filing an appeal.

16. **Clauses 37 to 43** of the Bill propose amendments to **the Excise Duty Act (No. 23 of 2015)**. The Bill proposes to:

- i. To repeal section 10 which previously provided for inflation adjustment.
- ii. Amend Section 20 5(b) to specify the days the Commissioner shall provide the licensed person a written notice of action as not less than 14 days.
- iii. Amend Section 36 to insert a new subsection to provide for payment of excise duty within 24 hours.
- iv. Amend First Schedule Part I to impose Excise Duty for various items such as imported fish, powdered juice, human hair, wigs, false beards, artificial nails, imported cement, imported cellular phones and imported paints, among others
- v. Increase gambling taxes: gaming, betting, lotteries and price completion from the current 7.5% to 20% of the amount wagered.

17. **Clauses 44 to 66** of the Bill propose to amend **the Tax Procedures Act (No. 29 of 2015)**. The Bill proposes the following amendments to the Act:

- i. Section 3 of the Act in the definition of “tax decision” clarifies that the decision does not include a refund decision and includes late payment interest.
- ii. Section 6A of the Act to provide that any multilateral agreement or treaty that has been entered into by or on behalf of the Government of Kenya relating to mutual administrative assistance in the collection of taxes shall have effect in the manner stipulated in such agreement or treaty.
- iii. Section 23A of the Act to provide that the Commissioner may establish an electronic system through which electronic tax invoices may be issued and records of stocks kept for the purposes of the Act.
- iv. Introduce new Section 32A to allow the Commissioner to recover or collect a tax claim pursuant to an international tax agreement.
- v. Introduce new Section 37E to provide that the Commissioner refrains from recovering interest, penalties or fines in cases an individual paid all the principal tax due before the 31st of December, 2022.
- vi. Introduce new Section 42C to provide that the Commissioner may appoint an agent for the purpose of the collection and remittance of rental income tax to the Commissioner.
- vii. Section 47 of the Act to provide a timeline of one hundred and twenty days within which the Commission is required to determine an application made to offset or refund overpaid tax.
- viii. Introduce new Section 59A to provide that the Commissioner may establish a data management and reporting system for the submission of electronic documents.
- ix. Section 86 of the Act to provide a penalty for failing to comply with the electronic tax system.
- x. Introduce new Section 97A to provide for the offense of impersonating an authorized officer.
- xi. Introduce new Section 108A to provide that where any matter under tax law is an issue in any ongoing criminal case and is also an issue in any pending civil case, then this shall not be ground for any stay, prohibition or delay of either the criminal or civil case, among other proposed amendments.

18. Clauses 67 to 84 of the Bill propose amendments to the Miscellaneous Fees and Levies Act (No. 29 of 2016). The Bill proposes to:

- i. Amendment of Section 7 to reduce the Import Declaration Fee from 3.5% to 2.5%.

- ii. Introduction of a new Section 7A to introduce the Export and Investment Promotion Levy to be paid on specified goods imported into the country at the rate provided in the Third Schedule.
 - iii. Amend Section 8 to reduce the Railway Development Levy from 2.5% to 1.5%.
 - iv. Make amendments to Second Schedule, Part I of the Act to reduce the export levy on raw hides and skins from 80% or USD 0.5 to 50% or USD 0.32 per kilogram
 - v. Exempt inputs and raw materials imported by manufacturers of fertilizer products from payment of Import Declaration Fees and Railway Development Levy. This will encourage investment in the Agriculture sector and improve food security in the country.
19. **Clause 73** of the Bill proposes to amend Section 131 of the **Betting, Gaming and Lotteries Act (Cap 131)** to provide for the application of the provisions of the Tax Procedures Act, 2015 in the collection of taxes under the Betting, Gaming and Lotteries Act.
20. **Clauses 74** of the Bill seek to amend Section 35 of the **Kenya Roads Board Act, 1999** to provide that the Board shall submit a collated annual roads programme together with the annual estimates.
21. **Clause 75** of the Bill proposes to amend Section 5 of the Kenya Revenue Authority Act, 1995 to provide for the capacity building and training offered by the institution to be available to the staff of the Authority, the general public and other jurisdictions.
22. **Clause 76** of the Bill proposes to amend **The Employment Act, 2007 (No. 11 of 2007)** by inserting a new section 31B:
- a. to provide for the deductions of payments by employers and employees to the National Housing Development Fund established under the Housing Act at 3% of the employee's monthly basic salary.
 - b. Providing the benefits of an employee contributing to the Fund.
 - c. Provide for the regulations that prescribe the qualifications to participate in the affordable housing scheme which shall commence the operation of the section.
23. **Clauses 77** of the Bill seek to amend Section 28 of **the Unclaimed Financial Assets Act (No. 40 of 2011)** to provide for the appointment of other persons as beneficiaries of a claimant.
24. **Clause 78** of the Bill proposes to amend Section 20 of **the Statutory Instruments Act (No. 23 of 2013)** to remove the mandatory requirement for the review of subsidiary legislation and the expiration of statutory instruments to and align the Statutory Instruments Act, 2013 with the Revision of Laws Act
25. **Clause 80-84** of the Bill proposes to amend **the Retirement Benefits (Deputy President and Designated State Officers) Act (No. 8 of 2015)** by inserting a new Section 4A and 4B

26. The Bill does not delegate legislative power and neither does it limit fundamental rights and freedoms.
27. 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 is not a Bill concerning county governments.
28. Enactment of this Bill may occasion additional expenditure of public funds.

PART THREE

3 STAKEHOLDER SUBMISSION

3.1 ANJARWALLA & KHANNA

In a meeting with the Committee held on Monday 22nd May 2023, Anjarwalla proposed the following amendments to the Bill.

Clause 2(a)

29. Amend Clause 2 by deleting the definition of ‘*winnings*’ *because* the entire payout will be subjected to withholding tax at the rate of 20% as opposed to the current position where 20% is applied only on the amount that is won over and above the stake upon a winning bet and no tax is payable upon a lost bet. Therefore, the proposed taxation of the stake has the effect of taxing the capital/investment by a punter who invests with the intention of making a gain should they win, which is contrary to the intention of income tax that seeks to tax “gains or profits” and not capital. This discriminates against taxpayers in the betting and gaming sector as there is no other sector where taxpayers’ capital is subjected to tax.

Committee Observation

The Committee agreed with the stakeholder on the definition of “winnings” to mean the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act excluding the amount staked or wagered in that particular transaction.”

Clause 4

30. Delete Clause 4, this is because the proposal will affect businesses that are thinly capitalized since they would have to claim foreign exchange losses within a period of 3 years. Therefore, the introduction of this proposal is likely to result in businesses being unable to claim foreign exchange losses that they are rightly entitled to if they continue to be thinly capitalized for a period of more than 3 years.

Committee Observation

The Committee rejected the deletion. However, the Committee amended the period of claiming foreign exchange losses from 3 years to 5 years as the increased period would be enough time for claiming foreign exchange losses.

Clause 5(a) (ii)

31. Delete clause 5(a) (ii) because it will lead to double taxation.

Committee Observation

The Committee associates itself with the stakeholder's comments. However, it rejects the proposed deletion and amends the clause to read: (fa) "club entrance and subscription fees *allowed* against an employer's income" to remove the element of double taxation.

Clause 6

32. Amend clause 6 to provide the tax rate at which repatriated income will be subjected as the Bill has not provided the rate. The Stakeholder further proposed that the repatriated income be subjected to tax at a rate that is not higher than the withholding tax applicable on dividends paid by a resident company to a nonresident shareholder (i.e., 15%) if equality is to be achieved.

Committee Observation

The Committee amended the clause to provide a rate of 15% that is aligned with the rate of withholding tax applicable on dividends paid by a resident for the purpose of equity and fairness. Therefore, their proposal was accepted.

Clauses 10 & 24(b)

33. Delete Clauses 10 and 24(b) because the income derived from DAT is also subject to the regular income tax provisions therefore, this is likely to result in double taxation on the same category of income. Additionally, charging the DAT on the gross fair market value consideration fails to take into account that income tax ought to be chargeable on net income and not on gross proceeds. The imposition of the DAT on gross fair market value will lead to the taxation of capital investment and not the gain or profits that are derived from the business activity.

Committee Observation

Clause 10:

The Committee rejects the proposal to delete clause 10 of the Bill and in turn, amend the clause by extending the days a taxpayer is required to remit the WHT to 5 working days. This is to address the stakeholder's concerns on payments made a few hours before the weekend and those made by bankers' cheques to reflect within a reasonable time.

Clause 24(b):

The Committee rejects the proposal to delete this clause in the Bill. However, the Committee amends the clause by introducing a new tax band of 32.5% for incomes between KSh. 500,000 to KSh. 800,000 and 35% tax rate for incomes above KSh. 800,000.

Clause 12

34. Delete Clause 12 since it will negatively impact the '*mama mbogas*' and informal sector that makes up the hustler economy. It is also not clear the grounds on which the Commissioner will exempt certain persons from the requirement to obtain the electronic tax invoice

Committee Observation

The Committee observed that the eTIMS system was in place and the Commissioner would provide administrative guidelines to clarify the issues raised on the implementation of the system. Therefore, their proposal to delete was rejected.

Clause 14

35. Amend clause 14 to provide the rate of tax which would be applicable to intellectual property income as the provision does not provide for it. In addition, the charging provisions of the Income Tax also ought to be amended to include intellectual property income as income chargeable in Kenya. The proposal to introduce a separate tax regime for intellectual property is a welcome move and would particularly incentivize investments in research and development, to the extent that the proposed regime provides preferential and attractive tax rates.

Committee Observation

The Committee amended the clause to include the rate applicable which is payable by companies operating in a preferential tax regime. The formula is meant to determine the income that will be subject to a preferential tax rate and not provide a special tax rate. Their proposal was therefore accepted.

Clause 20(c)

36. Amend Clause 20 by deleting Paragraph (c) on remittance of WHT within 24 hours. The proposal is unrealistic and provides an administrative burden to taxpayers. The proposal will also lead to increased chances of failure to comply as required due to the short window provided of 24 hours.

Committee Observation

The Committee agreed with the stakeholder that 24 hours was such a short time and amended the time frame for remitting WHT to 5 working days.

Clause 23(c)

37. Amend clause 23 (c) to read '*due to the nature of their business, have to be located in places which are outside Nairobi City County and Mombasa County.*' The proposal also needs to consider businesses that by their very nature must be located outside of Nairobi and Mombasa Counties. The clause is drafted in a manner that it is possible to exclude such businesses from qualifying for the investment deduction. In addition, the Government should extend the accelerated allowances to all investors in the manufacturing and hotel industry who meet the investment threshold of KES 2 billion.

Committee Observation

The Committee observed that the selection of Mombasa County and Nairobi County was discriminatory and thus deleted Clause 23 (c) to allow individuals investing in any part of the country to benefit from the investment deduction.

Clause 24(b)

38. Amend Clause 24(b) by deleting the new tax rate of 35% and expanding the tax bands to reduce the amount of tax that would fall in this category e.g., only for taxes above KSh. 12,000,000 per annum.

Committee Observation

The Committee rejects the proposal to delete this clause in the Bill. However, the Committee amends the clause by introducing a new tax band of 32.5% for incomes between KSh. 500,000 to KSh. 800,000 and 35% tax rate for incomes above KSh. 800,000.

Clause 26(a)

39. Amend Clause 26(a) to ensure fairness in imposing CGT. The Bill does not set out how these provisions will be implemented, how the gain will be computed, and who the CGT liability will fall on i.e., the shareholders of the foreign entity or the foreign company whose shares are being transferred, or the Kenyan company which is indirectly affected by the transfer of shares in the foreign entity. The provision lacks clarity and is likely to result in tax liability arising even where not intended.

Committee Observation

The Committee rejected the proposed deletion by observing that, the current treatment on computation of tax and incidence is clear.

Clause 26(b)

40. Amend Clause 26 by deleting paragraph (b) due to the existence of section 23 of the ITA which provides that the KRA has powers to make adjustments to a transaction that was affected for the avoidance or reduction in liability to tax in a year of income or in the 3 years immediately following the completion. The Bill proposes to increase the period within which a person may not benefit from re-basing, perhaps due to an exemption, from 3 years to 5 years. This is likely to reduce the number of businesses that attempt to start and scale up new businesses with the intention of selling the same in the medium term.

Committee Observation

The proposed deletion was rejected by the Committee noting that, there was no financial implication in the clause as it only sought to define Capital Gains Tax. Therefore, their proposal to delete was rejected.

Clause 26(c)

41. Retain Clause 26(c) of the Bill. This proposal favors the taxpayer since CGT will be payable either on receipt of the full purchase price or registration of the transfer. In practice, the full (entire) purchase price would only be released to the seller once the transfer has been registered in favor of the purchaser, at which point CGT would become due and payable. The proposal clarifies this point and is advantageous for the taxpayer since they will no longer be required to pay CGT on or before the date of transfer application and instead pay once full payment is received or the transfer is registered.

Committee Observation

The proposed deletion was rejected by the Committee. It was observed that payment of capital gain is a cash transaction and the tax point should be made at the time of transfer/before the transfer is made. Giving a period to pay tax after transfer may create a loophole for revenue leakage.

Clause 26(d)

42. Amend Clause 26 by deleting paragraph (d) as the two years would be contrary to the intended position and would pose significant challenges to the type of corporate reorganizations that can occur in Kenya and discourage mergers and reorganizations.

Committee Observation

The Committee rejected the proposed deletion. It was observed that Clause 26(d) prevents tax planning.

Clause 28

43. Delete Clause 28 because an increase in VAT on petroleum products will have a negative impact on the cost of living and the cost of doing business in Kenya. Notably, the price of fuel has a direct impact on all sectors of the economy.

Committee Observation

The Committee rejected the proposed deletion of Clause 28. The current VAT regime for petroleum products is akin to subsidizing the product by the government and therefore it has created market distortions. The Committee notes that the effect of the differential VAT on fuel has led to Oil marketing companies being in a constant credit position, thus leading to high tax expenditure for the Government.

Clause 33 (153) - Exemption of LPG from VAT

44. Amend Clause 33 paragraph 153. Reclassifying the supply of LPG to Exempt will not be ideal because VAT exemption impacts the deduction of input VAT. The costs associated with VAT exemption are not eliminated as the suppliers of LPG will include the non-deductible cost component in their pricing of LPG.

Committee Observation

The Committee agreed with the Stakeholder to delete LPG from the First Schedule and move it to the Second Schedule (zero-rating). The Committee observed that there was a need to encourage the use of clean cooking by reducing the price of LPG supplies.

Clause 33(xvi)

45. Amend Clause 33 (xvi) by defining '*specialized hospital*' under Clause 2.

Committee Observation

The Committee rejected the proposed deletion as the definition of “specialized hospital” was clear. The Ministry of Health has guidelines for the categorization of hospitals

Clause 33(xvii)

46. Amend Clause 33 by deleting paragraph (xvii). The proposed deletion will lead to clean cooking stoves becoming expensive. This proposal goes against the green policy which is supposed to promote clean cooking alternatives which have a reduced carbon footprint. The exemption from VAT on BEV stoves was introduced by the Finance Act, 2022 with effect from 1 July 2022 to encourage the use of clean stoves.

Committee Observation

The Committee agreed with stakeholders on the deletion of Clause 33 (xvii) observing that there was a need to encourage the use of clean energy and conserve the environment.

Clause 33(xxx)

47. Amend Clause 33 by deleting paragraph (xxx). The VAT cost associated with the VAT-exempted goods/services is not eliminated as the suppliers will in most instances include the non-deductible VAT component when pricing their products, this essentially means that agricultural produce will be expensive in the long run.

Committee Observation

The Committee agrees with the Stakeholder because reclassifying the inputs and raw materials from zero-rated to exempt will in the long run increase the prices of fertilizer and pest control costs which will have a significant impact on farmers, who already struggle with low yields due to poor soil quality and inadequate farming techniques.

Clause 33 (b) (v)

48. Delete the proposal to move the exportation of taxable services in respect of Business Process Outsourcing from Second Schedule to First Schedule. This is on the basis that the exemption (unlike zero-rating) does not entitle a taxpayer to claim any input VAT deduction, therefore, making the non-recoverable VAT cost a business cost and therefore a hit on business profits making Kenya less attractive to BPO ventures.

Committee Observation

The committee observed that taxation of the export of services compared with that of goods is difficult and often when the exportation of services was zero rated revenue losses arising from tax planning had been observed therefore the committee agrees with the need to exempt the export of services which is what the Bill is doing. Currently, the export of services is taxed at 16% and therefore the proposal in Bill is more favorable to the export of services.

Clause 41

49. Delete Clause 41. Remittance of excise duty on betting and gaming within twenty-four hours will have an impact on the business processes and cash flows of the players in the

industry. It will also affect the offerings in the industry and the overall growth in the industry. Additionally, the cost of compliance will be prohibitively expensive thus leading to non-compliance.

Committee Observation

The proposed deletion of clause 41 is rejected. The remittance of excise duty and other taxes in betting is currently being done within twenty-four hours.

Clause 43(a) (vi)

50. Amend Clause 43 by deleting paragraph (vi). The Clause proposes excise duty on wigs, false beards human hair and other products of hair which will negatively impact the growth of the beauty industry which employs many persons.

Committee Observation

The Committee agreed with the Stakeholder and deleted Clause 43(a) (vi) to allow the industry to recover from the post-covid recession.

Clause 43(b) (iii)

51. Delete Clause 43(b) (iii) because the proposal to increase the excise duty on mobile money transfers from 12% to 15% will greatly impact the *common mwananchi* who commonly relies on mobile money transfer services such as M-Pesa in their day-to-day activities. Additionally, the proposal to bring within the tax bracket fees charged by payment service providers licensed under the National Payment Systems Act, 2011 result in mobile money transfers being very expensive to transact.

52. The Excise Duty Act, 2015 already brings to tax fees charged for money transfer services by banks, money transfer agencies and other financial service providers at 20% of their excisable value. Introducing the additional tax on mobile transfer payments through persons licensed under the National Payment Systems Act, 2011 will have the impact of overtaxing the common mwananchi further eroding financial inclusion gains made so far.

Committee Observation

The Committee rejected the proposed deletion of clause 43(b)(iii). However, the Committee amended the clause by retaining the excise duty rate at 12% to harmonize with the money transfer services of the banks

Clause 36

53. Delete Clause 36. The proposal is highly punitive to taxpayers and poses a significant prejudicial impact on various Constitutional rights it will create cash flow challenges for many businesses. This Clause also lends itself to significant ambiguity since it does not indicate whether the

security deposit will earn interest or not. Additionally, the firm advised that the Supreme Court of Kenya in **Westmont Holdings vs CBK and others** has pronounced itself to state that access to justice should not be denied or restricted on account of a security deposit.

Committee Observation

The Committee agreed with the stakeholder on the deletion of Clause 36. The requirement to deposit 20 % of the disputed tax before an appeal to the High Court would limit the right to access justice. Further, the High Court has inherent authority to set the requirement for a deposit as it deems appropriate under the circumstances.

Clause 47

54. Amend Clause 47 to consider small-scale and informal businesses that cannot afford the installation of electronic tax devices. The proposal is to create a selection such that people will not purchase or obtain supplies from those that cannot afford to purchase the electronic tax invoice system noting that such expenses will not be deductible allowances. It is also not clear the grounds on which the Commissioner will exempt certain persons from the requirement to obtain the electronic tax invoice.

Committee Observations

The committee rejected the proposal because the use of electronic tax invoices is meant to enhance compliance and seal revenue leakage. Further, this is a system app available for download for free by all taxpayers and will greatly reduce taxpayer compliance costs unlike where taxpayers were previously required to buy expensive gadgets.

Clause 51

55. Amend Clause 51 to include the definition of 'tax debt' in the proposal to introduce a tax amnesty on penalties and interests and fines where a person had paid all the principal tax due before 31 December 2022 to avoid ambiguity.

Committee Observation

The Committee rejected the proposal by Anjarwalla because it is expected that the taxpayers will comply as the provision to grant waivers of penalties and interest has been proposed to be removed.

Clause 52

56. Delete Clause 52 because the proposal takes away the opportunity for the taxpayer to challenge the actions of the Commissioner prior to the registration of such notification and is likely to result in an abuse of power by the Commissioner. The proposal will be in violation of the dictate of natural justice and the right to fair administrative action and it will also be a violation of a person's right to property

Committee Observation

The Committee agrees with stakeholders on the deletion of the Clause to ensure taxpayers enjoy the right to fair administrative action and prevent the violation of a person's right to property

Clause 54(b)

57. Amend Clause 54 by deleting paragraph (b) because the proposal is likely to increase the compliance and administrative burden on taxpayers and is likely to hurt the cash flow of businesses that are already struggling amidst a tumultuous economic environment.

Committee Observation

The Committee noted that the Clause restricts the power of the court to admit new grounds of appeal depending on the circumstance and further takes away the inherent power of the courts to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Therefore, the proposal by the stakeholder was accepted.

Clause 59

58. Delete Clause 59 because the proposal takes away the inherent power of the courts to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

Committee Observation

The Committee agreed with the proposed deletion of Clause 59 as submitted by the stakeholder. The court has the inherent power to admit new grounds in a case before it.

Clause 67

59. Amend Clause 67 the proposal to have a flat Import Declaration Fee at the rate of 2.5% which would apply to raw materials and intermediate products imported by manufacturers upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to industry; and input for the construction of houses under an affordable housing scheme upon recommendation to the Commissioner by the Cabinet Secretary responsible for matters relating to housing be retained at 1.5%. The increase in IDF on the aforementioned category of products is likely to increase manufacturing costs as well as impact the costs of inputs into the affordable housing scheme. This seems to contradict the Government's agenda of supporting the construction and manufacturing sectors.
60. The increase in IDF on this category of products is contrary to the spirit of the treatment of those goods that have been listed under the duty remission scheme. It is also likely to increase costs for manufacturers under the duty remission scheme who are likely to pass on the costs to the consumers of the goods

Committee Observation

The Committee accepted the proposal by the stakeholder since it seeks to harmonize the rate of Import Declaration Fee (IDF) on all goods imported into the country for home use at the rate of two point five percent of customs value

Clause 76

61. Amend clause 76 to provide clarity on the operation of the Housing Fund to ensure that they stand up to constitutional safeguards such that the proposals will not be struck down by the Courts if enacted into law. There will be an undue burden that will be caused on the employees, particularly in a year where NSSF and NHIF contributions have increased dramatically.
62. Further, from an employer's perspective, the proposal will result in additional costs to the employers that had not been budgeted for and affect their cash flows that would otherwise have been used for other business activities. An additional challenge that will arise is the fact that there is no interest in the fund contributions that will be made by the employees. The proposal provides that should an employee not qualify for the affordable home, upon the expiry of 7 years, they can receive their contributions which will not only be computed as taxable income for that year but there is no interest to be received on the contributions made over the 7 years. This is a significant drawback where inflation in Kenya is averaging 6% per year and therefore, the value of money is continuously decreasing.
63. Furthermore, the proposal provides that all the contributions shall get a return based on the return of the Fund. Therefore, should the Fund make a loss, then the contributions would also be negatively impacted. In our view, greater clarity ought to be provided in relation to the operation of the Housing Fund to ensure that they stand up to constitutional safeguards such that the proposals will not be struck down by the Courts if enacted into law.

Committee Observations

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.2 GREEN LIGHT

Clause 4(a) (ii)

64. Amend Clause 4(a) proposal to cap the realized foreign exchange loss deduction period to 3 years from the date the loss was realized. This will affect the taxpayers whereby they will incur foreign exchange losses beyond their control because Kenya is a net importer of raw materials and finished products. The provision will also lead to rising global inflation and interest rates exacerbating foreign exchange losses.

Committee observation

The Committee rejected the proposal. However, the Committee amended the period of claiming foreign exchange losses from 3 years to 5 years as the increased period would be enough time for claiming foreign exchange losses.

Clause 7

65. Delete Clause 7 the proposal to disregard the withholding tax paid on a transaction disallowed as audit adjustment by Kenya Revenue Authority (KRA) reason being in the event that KRA disallows such an expense in the course of an audit, KRA should not retain the benefit of the withholding tax collected on the disputed transaction and still seek to collect 30% tax on the same transaction.

Committee observation

The proposed deletion is rejected. The Committee observed that the resident entities are only withholding agents and do not suffer the taxes they seek to be refunded, hence the issue of overpayment or double payment does not arise.

Clause 36 (a)

66. Delete Clause 36 (a) because the proposal will negatively impact taxpayers' cash flows resulting in the closure of businesses and loss of tax revenues, for example from employees laid off.

Committee observation

The Committee agreed with the stakeholder on the deletion of Clause 36. The requirement to deposit 20 % of the disputed tax before an appeal to the High Court would limit the right to access justice. Further, the High Court has inherent authority to set the requirement for a deposit as it deems appropriate under the circumstances.

3.3 LAW SOCIETY OF KENYA

Clause 2(a)

67. Amend Clause 2(a) regarding the definition of "Winnings" to be restricted only to profits made after the punter has deducted the staked amount. There have been a number of court decisions at the Tax Appeals Tribunal and at the High Court which have described "winnings" as being net of the amount wagered or staked.
68. Therefore, the following wording be adopted. "*winnings*" means the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act after deducting the amount staked or wagered.

Committee Observation

The Committee agreed with the stakeholder on the definition of "winnings" to mean the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act excluding the amount staked or wagered in that particular transaction."

Clause 5

69. Amend Clause 5 (a) by amending paragraph (ii) to make the provision to provide that club entrance and subscription fees disallowed against the employer's income, shall be deemed as gains or profits among other amendments.

Committee Observation

The Committee associates itself with the stakeholder's comments. However, it rejects the proposed deletion and amends the clause to read: (fa) "club entrance and subscription fees *allowed* against an employer's income" to remove the element of double taxation.

Clause 20

70. Amend Clause 20, the proposal on WHT on Digital Content Monetization is to be maintained at the rate of 5% as opposed to 15% since this will be discriminatory and may discourage innovation and creativity among the young.

Committee Observation

The Committee associates itself with the stakeholder's comments and amends the proposed rate to be 5%. This is harmonizing the WHT rate with other professional sectors. This is harmonizing the WHT rate with other professional sectors.

Clause 2

71. Amend Clause 2(b) by deleting the definition '*related persons*' because the definition may have the impact on extending a person's tax liability to include the person's relatives as contemplated in section 26(5) of the ITA. If this is the case, the same would be inherently problematic and would impose onerous conditions on people in terms of accounting for their relative taxes.

Committee Observation

The Committee accepted the proposal to delete the definition of "Persons" since it was already provided for in the Tax Procedures Act

Clause 4 (a) (ii)

72. Amend Clause 4 (a)(ii) to provide that foreign exchange loss be deferred and claimed over a period of not more than three years from the date the loss was realized by a company whose gross interest paid or payable to a nonresident person exceeds 30% of the company's earnings before interest, taxes, depreciation and amortization in any year of income.

Committee Observation

The proposed amendment was rejected. However, the Committee extended the period to 5 years which is sufficient for individuals to claim foreign exchange losses.

Clause 5(a) (ii)

73. Amend Clause 5(a) (ii) to provide that club entrance and subscription fees disallowed against the employer's income, shall be deemed as gains or profits.

Committee Observation

The proposed amendment was rejected. The Committee observed that since member clubs and trade associations are carrying on business as other taxpayers and in the same environment, it is discriminatory not to tax income from their businesses.

Clause 6

74. Amend Clause 6 by introducing a rate for repatriated profits. This is because at the moment, Kenya only taxes profits attributable to a Permanent Establishment (PE). The ITA does not have provisions for the taxation of repatriated income and taxes on all incomes made by a PE at a uniform rate of 37.5%.

Committee Observation

The Committee accepted their proposal to provide for the 15% rate on repatriated income to align it with the rate of the withholding tax applicable on dividends paid by a resident for equity and fairness.

Clause 7

75. Delete clause 7 because the provision is deemed unjust to taxpayers since they are compelled to forfeit the withholding tax, they have already remitted to the KRA, despite the KRA disallowing the corresponding expense and getting additional corporate income tax. As a result, this creates a situation where the same income is subjected to double taxation, by the KRA.

Committee Observation

The proposed deletion is rejected. The Committee observed that the resident entities are only withholding agents and do not suffer the taxes they seek to be refunded, hence the issue of overpayment or double payment does not arise.

Clause 9

76. Amend Clause 9 by retaining the current rate of Turnover Tax at 1%. This is because the potential increase of the Turnover Tax from 1% to 3% might have a discouraging effect on the informal sector, as it could be perceived as punitive due to the higher rates. This could lead to a reluctance among businesses in the informal sector to adopt or embrace the Turnover Tax.

Committee Observation

The Committee rejected their proposal by amending the thresholds to: “one million shillings but does not exceed twenty-five million shillings.” The rate is to be retained at 3% as the 1% rate was a cushion for small businesses during COVID.

Clause 10

77. Delete Clause 10 because the proposal can impose a significant burden on operators of digital assets exchange platforms. This is particularly challenging because many of these platform operators are non-residents and have no physical presence in Kenya.

Committee Observation

The Committee rejected the proposal to delete clause 10 of the Bill and in turn, amended the clause by extending the days a taxpayer is required to remit the WHT to 5 working days.

Clause 20

78. Amend Clause 20 by deleting paragraph (c) because the amendment fails to recognize that many delays in compliance due to time are inadvertent and beyond the control of taxpayers, e.g., delays in systems and levels of management approvals taxpayers who are generally seeking to be compliant would still face penalties and interest.

Committee Observation

The Committee agreed with the stakeholder on the administrative hurdle of remitting WHT within 24 hours. The Committee therefore amended the time period from 24 hours and to 5 working days.

Clause 22

79. Amend Clause 22 to provide tax exemption for royalties paid to a non-resident person by a company undertaking the manufacture of human vaccines, interest paid to a resident person or non-resident person by a company undertaking the manufacture of human vaccines, investment income from a post-retirement medical fund and payment in the form of funds transfer from a post-retirement medical fund to a medical insurance cover provider

Committee Observation

The Committee rejected the proposal by LSK

Clause 24

80. Amend Clause 24 by deleting subsection (b) because the statistics published by the Kenya National Bureau of Statistics (KNBS) a large majority of Kenyans earn below KES 50,000. As such introduction of this measure will not yield a lot of revenue and is thus ineffective.

81. Amend the Third schedule as follows:

- i. To include post-retirement medical fund relief at 15% of the amount contributed or Ksh.60,-000 per annum, whichever is lower.
- ii. To provide adjustment of rates of tax as follows; 10% on the first ksh.288,000, 25% on the next 100,000, 30% on the next ksh.5,612,000 and 35% on all income over Ksh.6,000,000
- iii. To decrease the rate of residential rent income from 10% to 7.5%

Committee Observation

The Committee rejected this proposal and further recommended that the PAYE tax bands be amended to include: Ksh500,000- Ksh800,000, 32.5% per month while imposing a 35% rate for income above Ksh800,000 per month. This will enable the government to raise revenue, enhance fairness and equity, encourage investors to invest in the country and enhance local value addition thus creating job opportunities for the citizens to support local manufacturing, including a 15% repatriation tax rate and increase compliance by agents.

Clause 26

82. Amend Clause 26 to clarify who shall be responsible for the payment of the CGT tax because as drafted, the section is uncertain regarding the responsibility for paying the tax on capital gains when a non-resident person is involved in the disposal.

83. The society further proposes the deletion of the following: -

- i. *Capital flight-With an increase in global interest rates, volatile exchange rate and the war in Ukraine, the introduction of indirect taxation of capital gains may chase away investors as the little margin derived in Kenya will be eaten away by taxes.*
- ii. *Taxation of gains not attributable to Kenya- The Bill does not provide for a formula for the attribution of the gain. The law as worded could result in a holding company with interest in other countries being taxed on the whole gain instead of a portion of the gain relating to Kenya.*
- iii. *Regional change in the manner of taxing indirect transfer of Property - Uganda currently taxes indirect disposal but they are moving away from indirect taxation into a WHT regime at 5%. This could be mainly driven by the complexities faced by revenue authorities in taxing such transactions.*

84. Delete 26 (d) in paragraph 13(c) According to the proposed amendment, the exemption would only be applicable to groups that have existed for at least 24 months. Consequently, newly formed groups would not qualify for the CGT exemption on internal property transfers until they have fulfilled the 24-month threshold.

Committee Observation

The Committee rejected the proposal to delete Clause 26(d)10 of the Bill and in turn, amended the clause by extending the days a taxpayer is required to remit the WHT to 5 working days.

Clause 12

85. Delete clause 12 the provision on expenditure or loss where the invoices of the transactions are not generated from an electronic tax invoice management system except where the transactions have been exempted in accordance with the Tax Procedures Act, 2015. The proposal as drafted suggests adding a requirement that business expenses can only be considered for tax deductions if the invoices received for those expenses are generated using an electronic tax invoice management system. However, there may be exceptions to this requirement especially in instances where the transaction, which gave rise to the expense, is exempted from the regulations governing the electronic tax invoice management system.

Committee Observation

The Committee rejected the proposed deletion and observed that the eTIMS system was in place and the Commissioner would provide administrative guidelines to clarify the issues raised on the implementation of the system.

Clause 20 (c)

86. Amend Clause 20 by deleting paragraph (c) because the proposal on remitting withholding tax within 24 hours can impose a significant burden on taxpayers. We also note that the proposed change in remittance timelines for withholding tax presents a significant adjustment that would necessitate taxpayers to reconfigure their systems to ensure compliance with the stricter obligations. This would impose a bigger burden on the taxpayers.

Committee Observation

The Committee rejected the proposal to delete Clause 26(d)10 of the Bill and in turn, amended the clause by extending the days a taxpayer is required to remit the WHT to 5 working days.

Clause 22

87. Amend Clause 22 to provide tax exemption for royalties paid to a non-resident person by a company undertaking the manufacture of human vaccines, interest paid to a resident person or non-resident person by a company undertaking the manufacture of human vaccines, investment income from a post-retirement medical fund and payment in the form of funds transfer from a post-retirement medical fund to a medical insurance cover provider.

Committee Observation

The Committee rejected the proposal by LSK

Clause 26

88. Delete Clause 26 the proposal to modify the CGT exemption provisions. According to the proposed amendment, the exemption would only be applicable to groups that have existed for at least 24 months. Consequently, newly formed groups would not qualify for the CGT exemption on internal property transfers until they have fulfilled the 24-month threshold. LSK submitted that businesses usually have different strategic objectives, a business may seek to restructure its business and transfer property within the group. As such, this provision is onerous and may inhibit doing business within a group.

Committee Observation

The Committee observed that, this is not a new tax and the current treatment on the computation of tax and incidence will continue. The Committee further observes that for any issue that requires clarification, the Commissioner can issue a public/private ruling in accordance with Tax Procedures Act. The proposal is rejected.

Clause 36

89. Delete Clause 36 because this limits taxpayers' access to justice and their right of appeal as a party unable to make the payment within the tight appeal timelines would be forced to forgo their right to appeal. It may lead to misuse by KRA as erroneous assessments may be issued with the hope of collecting 20% of the tax assessed and this will favor KRA in an Alternative Dispute Resolution ("ADR") process as taxpayers may be intimidated to settle cases rather than pursue the litigation process. Given that tax disputes can take several years to be resolved even before the High Court, the provision is likely to significantly affect the cash flows of taxpayer

Committee Observation

The right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice and reduce working capital. Therefore, the proposal was accepted.

Clause 43

90. Delete Clause 43 because the proposal is extremely punitive for consumers as the increased costs of production will be passed to them by the manufacturers. This will limit the basic food alternatives to the consumers as the said commodities will be expensive. Increasing the charges of on money transfer services by cellular phone service providers or payment service providers licensed under the National Payment System Act, 2011 to Excise Duty at a rate of 15% from 12% would also be unfair to ordinary Kenyans.

Committee Observation

The Committee rejected the proposed deletion. However, the Committee has amended the Bill to align the rates of Excise Duty on money transfer by banks and other financial institutions and the transfer of money through cellular phones.

New Proposal

91. Amend the First Schedule of the Excise Duty Act to allow for exemption from Excise duty for vehicles that are 100% electric. We propose that 100% electric-powered motor vehicles of tariff no. 8702.40.11, 8702.40.19, 8702.40.21, 8702.40.22, 8702.40.29, 8702.40.91, 8702.40.99 and 8703.80.00 be moved from the First Schedule Part I to the Second Schedule Part I

Committee Observation

The Committee accepted the proposal to Zero rate supplies for the manufacture of electric vehicles.

Clause 46

92. Amend Clause 46 to read *'Where the Commissioner notifies a taxpayer that an application under subsection (1)(a) has been ascertained and applies overpaid 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 notification payment. The date of allocation of the tax refund to the outstanding liability should be the date the tax payment was made resulting in the overpayment and not the date of approval/notification of the transfer.'*

Committee Observation

The Committee rejected the proposed amendment. Clause 46 is meant to compel trustees who are residents in Kenya to keep records and avail them to the Commissioner for compliance check on their tax obligations.

Clause 67 (a)

93. Delete clause 67 (a) the goods imported under the EAC duty remission will be subject to IDF at the proposed rate of 2.5% effectively increasing the cost of manufacture, there is a need to maintain the IDF at the prevailing rate.

Committee Observation

The Committee accepted the proposal by the stakeholder since it seeks to harmonize the rate of Import Declaration Fee (IDF) on all goods imported into the country for home use at the rate of two point five percent of customs value

Clause 76

94. Delete clause 76 because some individuals have existing Mortgages and personal construction loans. No consideration has been provided to these individuals who are already paying high loan/mortgage installments per month. Further, on reduction of pension contributions- Due to the cost imposed on the employer and employee, most employers are considering reducing pension contributions.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.4 INSTITUTE OF ECONOMIC AFFAIRS

Clause 5(b)

95. Delete Clause 5(b) '*any amount paid or granted to a public officer to reimburse an expenditure incurred for the purpose of performing official duties, notwithstanding the ownership the or control of any assets purchased.*' This will create disparity in the treatment of reimbursements between public and private sector workers. It is also subject to abuse, especially where it suggests that costs for the purchase of assets can be reimbursed regardless of who owns the assets.-

Committee Observation

The Committee rejected the proposal by noting that, the subject of the clause was with respect to public officers only.

Clause 9

96. Delete Clause 9. As much as the intention of the amendment is to broaden the scope of the turnover tax by including businesses with a turnover ranging from KES 500,000 to KES 1 million, which were previously exempted and increase the rate of turnover from 1% to 3%. The proposal could inadvertently drive informal businesses even further towards adopting strategies to evade compliance.

Committee Observation

The Committee rejected the proposal. However, it amended the thresholds to: "one million shillings but does not exceed twenty-five million shillings." The rate is to be retained at 3% as the 1% rate was a cushion for small businesses during COVID.

Clause 17(a)

97. Delete Clause 17(a) '*A body of persons which carries on the activities of a members' club or trade association shall be deemed to be carrying on a business and the gross receipts on revenue account (excluding joining fees, welfare contributions and subscriptions) shall be deemed to be income from a business.*' The tax treatment change will force these bodies to rethink their financial strategies, budgets, and pricing structures to account for the increased tax liability, which may necessitate the use of informal mechanisms.

Committee Observation

The Committee observed that since member clubs and trade associations are carrying on business as other taxpayers and in the same environment, it is discriminatory not to tax income from their businesses. Therefore, their proposal was rejected.

Clause 24(b)(i)

98. Delete Clause 24(b)(i) the proposal to introduce a new band at the rate of 35% for income above KSh. 500,000. Increasing taxes on employees earning more than KES 500,000 per month to shore up tax revenue may have a negligible impact on revenue given that majority of employees earn below KES 100,000 per month. This may also create disincentives for high earners, increase the risk of tax avoidance and evasion, and potentially hinder economic growth.

Committee Observation

The Committee rejects the proposal to delete this clause in the Bill. However, the Committee amended the clause by introducing a new tax band of 32.5% for incomes between KSh. 500,000 to KSh. 800,000 and 35% tax rate for incomes above KSh. 800,000.

Clause 24(b) (vii)

99. Amend Clause 24(b) (vii) to create a graduated tax band for content creators. The Institute through their CEO submitted that the following graduated tax bands should be considered noting that the emergence of the digital space has given rise to a new avenue for employment, where individuals can monetize their digital content through various means such as advertisements, sponsorships, and affiliate marketing.

- i. Any income below KSh. 24,000- tax-exempt
- ii. 5% for incomes above KSh. 24,000 but below KSh. 250,000
- iii. 10% for earnings above KSh. 250,000 but below KSh. 500,000
- iv. 15% for earnings above KSh. 500,000

Committee Observation

The Committee amended the clause to remove the KSh. 24,000 threshold limit to enhance revenue collection. Therefore, the proposal was rejected.

Clause 33(xvi)

100. Retain the clause since it is meant to encourage more investors in the country to focus on the health sector

Committee Observation

Agreed

Clause 33(xx)

101. Retain the proposal noting that the supply of these products mentioned in this clause which should be more than ten percent in weight will be zero-rated. Maintaining the zero rate will make the cost of production lower as producers will be able to claim input VAT.

Committee Observation

The Committee rejected the proposal because it is a clean-up as the provision appears in the First Schedule as an exempt supply and Second Schedule twice as zero-rated.

Clause 34(1)

102. Retain the proposal since its implication will be to widen the tax base such that suppliers of digital services will be required to register their companies for VAT irrespective of whether the business has an annual threshold of KSh 5 million.

Committee Observation

Agreed

Clause 43(1)

103. Retain the proposal since it seeks to imply that one can keep business records elsewhere not necessary in Kenya and considering that we are in the digital era which helps entities to reduce the administration cost associated with keeping records within Kenya territory

Committee Observation

Agreed

Clause 34(a) (i)

104. Delete Clause 34(a) (i) the proposal on to make raw material supplied to pharmaceutical manufacturers from zero-rated to exempt. The manufacturers will not be able to claim credit for VAT they pay on inputs.

Committee Observation

The Committee accepted the proposal since retaining the item at zero rates would imply that the manufacturers will not be able to claim input VAT and may translate to higher prices for pharmaceuticals

Clause 40

105. Amend Clause 40 to include penalties only for a person “*who knowingly purchases or trades in goods for which Excise Stamps have not been attached*”.

Committee Observations

The Committee accepted the proposal. This provides clarity in culpability.

Clause 43

106. Amend Clause 43 the proposal on reduction of excise duty on telephone and all fees on banking charges and internet further to 5% to allow consumers to afford calls for private and business purposes.

Committee Observation

The Committee agreed with the proposal in the Bill because this aligns the rates of Excise Duty on money transfer by banks and other financial institutions and the transfer of money through cellular phones.

3.5 PRICE WATERHOUSE COOPERS LIMITED**Clause 12(a)**

107. Delete Clause 12(a) ‘ *any expenditure or loss where the invoices of the transactions are not generated from an electronic tax invoice management system except where the transactions have been exempted in accordance with the Tax Procedures Act, 2015.*’ If this clause is enacted into law would mean that expenses from suppliers that have not been registered for VAT purposes will not be deductible for corporate income tax purposes. Most Micro, Small and Medium enterprises (MSMEs) are not registered for VAT purposes as they have not met the threshold for VAT registration. Consequently, businesses will shun trading with MSMEs as taxpayers are not able to generate valid tax invoices. This will negatively impact the MSMEs operating in the country. The MSMEs provide opportunities for absorbing low-skill and economically excluded individuals of the labor force including youth, women, persons with disabilities and those with low levels of education.

Committee Observation

The Committee observed that the eTIMS system was in place and the Commissioner would provide administrative guidelines to clarify the issues raised on the implementation of the system. Therefore, the proposal to delete was rejected.

Clause 20 (c)

108. Delete Clause 20(c). This seeks to place an impractical compliance burden on the taxpayer which is contrary to the design of a fair tax code which should not impose punitive compliance burdens on taxpayers. Real-time payment of taxes should be applied only to automated transactions where the payments /income are received regularly on an automated platform thus allowing for real-time remittance of the taxes. Most payments subject to withholding tax are processed manually and are not regular.

Committee Observation

The Committee observed that the proposal in the Bill to have withholding tax agents remit the withheld tax within ~~24~~ hours is cumbersome and costly to businesses given that the period is being reduced from the 20th of the next month to just ~~24~~ hours. Therefore, the Committee proposed to increase the period to 5 working days. Therefore, the proposal was rejected.

Clause ~~24~~(b)(i)

109. Delete Clause 24 (b)(i) the proposal to create a new tax band at the rate of 35% on income above KSh. 500,000 per month. This will increase pressure on the net take-home pay of employees considering that NSSF and NHIF contributions have been revised upwards.

Committee Observation

The Committee amended the tax bands by introducing a new tax band of 32.5% for incomes between Ksh. 500,000 to Ksh. 800,000 per month and a 35% tax rate for incomes above KSh. 800,000. Therefore, their proposal was rejected.

Clause 76

110. Amend Clause 76 the proposal on mandatory Contribution to Housing Fund to make it voluntary on the part of both the employer and the employee. This is because overburdens employers with the increased cost of employment and may lead to loss of current employment or potential employment opportunities. The Bill also fails to define the term employee to implement the proposed changes. This is likely to make the provisions apply indiscriminately to non-resident individuals who may be working in Kenya temporarily and thus have no desire to benefit from the housing fund in Kenya.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 36

111. Delete clause 36 of the proposal on payment of a 20% deposit of disputed taxes because the proposed provision is a limitation of taxpayers' access to justice and their right of appeal. A party unable to make the payment within the tight appeal timelines would be forced to forgo their right to appeal. PWC observed that the issue of security of costs is contentious. In *Westmont Holdings Limited (Appellant) and Central Bank of Kenya, Kamlesh Mansukhlal Pattni & Uhuru Highway Development Ltd*, the Supreme Court cautioned against the introduction of unnecessary fetters to the administration of justice. Also, the court recently (*in Nairobi High Court Petition Number E226 of 2020 and Nairobi High Court Petition Number E332 of 2020*) granted conservatory orders against a similar provision in the Public Procurement and Asset Disposal Regulations, 2020 which proposed to introduce a security fee prior to the filing of a review at the Review Board and an appeal at the High Court.

Committee Observation

The right to appeal is a constitutional right, and requiring a 20% security deposit by a party to a dispute will limit access to justice and reduce working capital. Therefore, the proposal was accepted.

Clause 29A (1)

112. Amend clause 29A (1) to give the Tribunal discretion to extend the time to apply for a review of decrees and orders where there is a delay based on the circumstances of each case. PWC proposed that the Bill be amended by inserting new sections as follows

(2) The Tribunal may, upon application in writing or through electronic means, extend the time for filing the Application for review of decree or orders under subsection (1)

(3) An extension under subsection (2) may be granted owing to absence from Kenya, or sickness, or other reasonable cause that may have prevented the applicant from filing the Application for review of decree or orders within the specified period.

(4) Applications for review of decree or orders under subsection (1) may be made —

1. (a) upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by the applicant at the time when the decree was passed or the order was made;

2. (b) on account of some mistake or error apparent on the face of the record; or

3. (c) for any other sufficient reason.

(5) Upon receipt of an application for review under subsection (1), the Tribunal may set aside, vary or affirm the decree or the order, stating reasons for review as it deems fit within fourteen days after receipt of an application.

Committee Observation

The Committee rejected the proposal. The Clause in its current form aims to make it clear that the provision of imported digital services complies with the amendments made to the Finance Act 2022.

Clause 50

113. Delete Clause 50. The proposal will leave KRA and taxpayers with no avenue for relief where there is great difficulty in the recovery of taxes. The deletion of this provision will force KRA to undertake burdensome enforcement measures that may be disproportionate to the tax that they are seeking to recover. The provision is also important to allow KRA to abandon the collection of taxes, especially for entities that are declared insolvent.

Committee Observation

The Committee observed that there is a need to remove the discretion in consideration for abandonment of tax to ensure equity and fairness in the treatment of taxpayers. Therefore, the proposal was rejected.

Clause 51

114. Amend clause 51 of the proposal on amnesty to include taxpayers who have outstanding penalties arising from non-compliance such as late filings.

Committee Observation

The Committee rejected the proposal by PWC because it is expected that the taxpayers will comply as the provision to grant waivers of penalties and interest has been proposed to be removed.

Clause 52

115. Delete Clause 52. The Proposed amendment poses a risk to the rights of taxpayers as it removes the requirement for the Commissioner to notify the taxpayer of the intention to register security against their property. This places a taxpayer in a precarious position since taxpayers would not be able to challenge the decision of the Commissioner before the security is registered.

Committee Observation

The Committee observed that the amendment poses a risk to the rights of taxpayers as it removes the requirement for the Commissioner to notify the taxpayer of the intention to register security against their property. Therefore, the Committee accepted the proposed deletion.

Clause 59

116. Delete Clause 59 on restriction on new grounds of Appeals. The proposal seeks to deny taxpayers an opportunity to amend pleadings. The opportunity to amend pleadings to add more grounds of appeal is essential for taxpayers as it enables them to ask the TAT/court for leave to include grounds responding to issues that may have arisen in the objection decision or canvass further documentary evidence that may be submitted to the Tribunal to enable them to decide.

Committee Observation

The Committee observed that the clause restricts the power of the court to admit new grounds of appeal depending on the circumstance and further takes away the inherent power of the courts to make such

orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Therefore, the Committee accepted the proposed deletion.

Clause 30(a)

117. Delete Clause 30(a) because the proposed replacement of the conjunction “or” with “and” in the law implies that taxpayers must, in addition to being in possession of valid tax invoices, taxpayers seeking input tax credits will be required to evidence that the VAT in question has been declared (paid) to the KRA by the supplier of the goods or services. PWC submitted that this is certainly and onerous obligation imposed on taxpayers as it requires taxpayers to compel third parties to comply with VAT Act provisions while there are no provisions to enable a taxpayer to do so. The KRA has the administrative mandate to compel compliance with the VAT Act and it cannot pass on this responsibility to taxpayers.

Committee Observation

The Committee rejected the proposed deletion.

Clause 35

118. Delete Clause 35 to maintain the exportation of taxable services as a zero-rated supply the service sector is an important component of the country’s economy as it makes a direct and significant contribution to the Gross Domestic Product (GDP), job creation and an overall positive investment climate which is an essential determinant of growth and development. The introduction of the zero-rated VAT status of exported services will make Kenya a favorable investment destination for companies looking to set up regional hubs thereby contributing to the revenue collection by the Government.

Clause 43

119. Delete Clause 43 (c)(ii) to retain the terms ‘relating to their licensed activities’. This is because the definition will be ambiguous if the clause is passed as it is proposed. Additionally, the imposition of Excise Duty on innovative unlicensed activities will be discriminatory as the same will not be subject to Excise Duty if provided by a non-financial institution. In addition, some of these unlicensed activities are subject to other taxes such as VAT, hence subjecting them to Excise Duty will lead to over-taxation.

Committee Observation

The Committee observed that the proposed clause was ambiguous as to what ought to be subject to excise duty and will lead to unnecessary disputes with KRA. Therefore, the Committee accepted the proposal

3.6 ERNEST AND YOUNG

Clause 2

120. Amend Clause 2 to ensure the proposed definition of a "person" is harmonized with the definition in the Tax Procedures Act (TPA) and the Value Added Tax (VAT) Act. To mitigate potential ambiguity greater clarity and consistency are required in the tax laws to facilitate precise interpretation of the law, minimizing the potential for misinterpretation or misuse.
121. The Tax Procedures Act Definition; *‘an individual, company, partnership, limited partnership, association of persons, trust, National Government, foreign National Government, political subdivision of the government or an international organization*

Committee Observations

The Committee observed that the definition of “person” was provided for in the Tax Procedures Act and hence it accepted the proposal.

Clause 5

122. Delete Clause 5(ii) the proposal on club and subscription fees disallowed against the employer’s income. The proposal is likely to increase the tax burden on employees and discourage employees from joining clubs; employees will need to pay the tax from their pockets. It will also increase the risk of unemployment in the country since clubs may need to scale down operations due to low subscriptions.

Committee Observations

The Committee associates itself with the stakeholder's comments. However, it rejects the proposed deletion and amends the clause to read: (fa) “club entrance and subscription fees *allowed* against an employer’s income” to remove the element of double taxation.

Clause 5(b)

123. Amend Clause 5(b) by replacing the words ‘a public officer’ with the words ‘an individual’ to cater to both public and private sectors. Include an upper limit of the expenditure, the asset referred to in the proposal be in the name of the employer. This will enhance equality, and accountability to minimize abuse of legislation and thereby revenue leakage

Committee Observations

The Committee rejected the proposal and determined that the subject of the clause was with respect to public officers only.

Clause 6

124. Amend Clause 6 to provide the rate for repatriated income to be 15%. The proposal is in line with the OECD Model Tax Convention principles that provide for an additional tax known as “Branch tax” on dividends which would be due if the branch had been a subsidiary of the foreign company and had distributed its profit as dividends. They propose that a rate of 15% should be prescribed on the branch's repatriated income.

Committee Observations

The Committee accepted their proposal to provide for the 15% rate on repatriated income as this will be in alignment with the rate of the withholding tax applicable on dividends paid by a resident for equity and fairness.

Clause 10

125. Amend Clause 10. This is because digital assets are susceptible to fluctuations and it will ensure fairness in taxation.

Committee Observations

The Committee rejected the proposed deletion. However, it amended the clause by extending the days a taxpayer is required to remit the WHT to 5 working days. This is to address the stakeholder's concern on time to remit the WHT to be within a reasonable time.

Clause 12 (a)

126. Delete Clause 12(a) that provides 'any expenditure or loss where the invoices of the transactions are not generated from an electronic tax invoice management system except where the transactions have been exempted in accordance with the Tax Procedures Act, 2015.' The proposal has far-reaching consequences as it has not guided how the transactions should be dealt with. Also, the TPA has not provided any guidance on exemptions of transactions for this purpose. They propose that the TPA is amended to include the exemptions referred to in the proposal before this law is enacted. A minimum threshold for invoices that qualify for eTIMS compliance so as not to drive the small sole traders out of business.

Committee Observations

The Committee observed that the eTIMS system was in place and the Commissioner would provide administrative guidelines to clarify the issues raised on the implementation of the system. Therefore, the proposal to delete the clause was rejected.

Clause 12 (b) (iv)

127. Amend Clause 12(b)(iv) because the period of three years is a short period for companies that are funded by non-residents. Therefore, the three years be increased to five years so that highly geared companies whose interest exceeds 30% of EBITDA have a more reasonable time to claim the disallowed interest.

Committee Observations

The Committee amended the foreign exchange losses period to 5 years, the period is sufficient for individuals to claim foreign exchange loss. The Committee rejected the proposed amendment.

Clause 20

128. Delete clause 20(b) (3AB) the proposal on remitting withholding tax within 24 hours. The proposal could have a significant impact on the taxpayer's cash flow and increase administrative burdens due to

the shorter time frame. Accounting for WHT on accruals will become complex owing to the fact that it takes time to determine if an accrual will be reversed or retained on a monthly basis. They propose that the existing provision that allows Withholding Tax to be remitted on or before the twentieth day of the month following the month in which the tax was deducted is retained.

Committee Observations

The Committee agreed with the stakeholder that 24 hours was a limited time and amended the time frame for remitting withholding tax to 5 working days.

Clause 23 (c)

129. Delete clause 23(c) The proposal on investment allowance of 100% or 150% as applicable will be limited to capital expenditure on a building used for manufacture, hotel building, and machinery used for manufacture. The proposal will exclude other capital expenditures, such as hospital buildings, petroleum or gas storage facilities, educational buildings, and hospital equipment, from qualifying. Further, investments in SEZs will be affected unless they relate to the building used for manufacture, hotel building, and machinery used for manufacture.

Committee Observations

The Committee observed that the selection of Mombasa County and Nairobi County was discriminatory and thus deleted Clause 23 (c) to allow individuals investing in any part of the country to benefit from the investment deduction. Therefore, the proposed deletion was accepted.

Clause 24(b) (i)

130. Delete Clause 24(b)(i) the proposal on introducing a new tax band at 35% on income above KSh 500,000 in the Third Schedule to the Income Tax Act in the Head B paragraph. The increased cost of living has had an impact on all taxpayers irrespective of social status. The group targeted with the increased tax rate generally pays for most of their social services, has taken out loans that they are servicing and continues to contribute significantly to the exchequer This increase will lower the take-home pay which will adversely impact the ability to meet certain obligations, reduce on savings and also reduce local demand for goods and services which will have an impact on the economic growth.

Committee Observations

The Committee amended the tax bands by introducing a new tax band of 32.5% for incomes between KSh. 500,000 to KSh. 800,000 per month and a 35% tax rate for incomes above KSh. 800,000. Therefore, the proposal for deletion was rejected.

Clause 24 (b) (vii)

131. Delete Clause 24(b)(vii) ‘in respect of payments for sales promotion, marketing, advertising services, the aggregate value of which is twenty-four thousand shillings in a month or more, five percent of the gross amount’ and ‘in respect of payments relating to digital content monetization, fifteen percent’ It will bring fairness to digital content creators and spur the digital economy.

Committee Observations

The Committee amended the clause to remove the KSh. 24,000 threshold to remove the limit and enhance revenue collection. Therefore, the proposed deletion was rejected.

Clause 28 (a)

132. Delete the proposal on increasing VAT on petroleum products from 8% to a standard rate of 16%.
Introducing VAT on petroleum products will increase the prices of fuel, kerosene, etc. making it less affordable to the populace. With petroleum products (petrol, diesel, kerosene, etc.) being a key input for production, the effect of this will be a potential increase in the cost of living. Fuel/Petroleum prices have already escalated after the fuel subsidy was repealed. An extra tax will make the burden worse.

Committee Observations

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee rejected their proposed deletion.

Clause 30

133. Delete clause 30. This proposal goes against the principle of indemnity whose main objective is to return the insured in the same position financially as they were before the loss. The compensation does not relate to any value addition by the insurer and therefore should not be viewed as 'consideration' for taxable value for VAT purposes.

Committee Observations

The Committee rejected the proposal and adopted it as it is in the Bill since it would disallow an individual from claiming input VAT twice.

Clause 33

134. Delete Clause 33. This would increase the cost of production in the sector as the affected farmers and manufacturers would not be able to claim input VAT incurred in their operations. The proposal is expected to have a negative ripple effect on the economy by decreasing the levels of new investment and revenue generated within the sector and ultimately increasing consumer prices of agricultural products. Zero-rating of the agricultural inputs will cushion agricultural industry players against further costs and promote the economic recovery of the sector.

Committee Observations

The Committee observed that exempting agricultural inputs will increase fertilizer and pest control costs which will have a significant impact on farmers, who already struggle with low yields due to poor soil quality and inadequate farming techniques. Therefore, the Committee accepted the proposal.

Clause 36

135. Delete Clause 36 the proposal on depositing 20% to the KRA account before the determination of the case in High Court. There should be fair determination of tax disputes, without imposing a financial burden on the taxpayer. Tax disputes vary depending on the complexity of the issues for determination if adopted, would be unfair and unreasonable for taxpayers as they would be required to pay tax, prior to the final determination of a tax dispute, especially where the appeal is based on a question of law, with high chances of success. This may also have a negative effect on the taxpayer's financial position which may in turn result in crippling their business.

Committee Observations

The right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice and reduce working capital. Therefore, the proposal was accepted.

Clause 41

136. Delete Clause 41 paragraph 36A (3) the proposal to remit taxes within 24 hours. The requirement to remit taxes within 24 hours makes the costs of compliance rather costly and burdensome, which is contrary to the simple principle of taxation. Further, the proposal would bestow excessive powers on the Commissioner, which may create uncertainty for providers of excisable services in general.

Committee Observations

The Committee rejected the proposed deletion. The Betting companies are currently remitting WHT within twenty-four hours.

Clause 50

137. Delete Clause 50. The proposal to repeal section 37 since repealing the section will create an unnecessary administrative and financial burden on the Commissioner to collect taxes where it is impossible to recover the same, especially in cases of bankruptcy, insolvency or simply where the tax ought not to be paid. They suggest, to meet the intended objectives of the drafters, a sub-section may be included to create room for the development of guidelines, which will govern the procedure for tax abandonment and criteria that need to be met for a tax to be abandoned.

Committee observations

The Committee observed that there is a need to remove the discretion in consideration for abandonment of tax to ensure equity and fairness in the treatment of taxpayers. Therefore, the Committee rejected the proposal by the stakeholder.

Clause 52

138. Amend Clause 52 by inserting a timeline for paying taxes due. This will ensure that taxpayers are not caught off-guard by agency notices and will give the taxpayer sufficient time to enter into a payment arrangement with the commissioner. They propose an amendment to include a provision under subsection 9 that the Commissioner should give the taxpayer a 14-day notice to pay the taxes due or propose a payment plan, failure to which the Commissioner will issue an agency notice.

Committee Observations

The Committee observed that the amendment poses a risk to the rights of taxpayers as it removes the requirement for the Commissioner to notify the taxpayer of the intention to register security against their property. As a result, taxpayers would not be able to challenge the decision of the Commissioner before the security is registered. Therefore, the Committee rejected the clause.

Clause 54(b)

139. Delete Clause 54(b) the proposal to remit withholding VAT within 3 days after deductions are made. This proposal is not practical as it will require continuous withholding and payment of VAT. The introduction of this requirement will create an administrative burden on the agent to submit returns daily, will result in high compliance risks and will also affect the agent's cashflows resulting from bank continuous transactions. The proposal will also create an unfair practice, where a few taxpayers will be mandated to remit tax at shorter intervals compared to other taxpayers who file and pay VAT taxes monthly, against the principle of taxation.

Committee Observations

The Committee noted that the Clause restricts the power of the court to admit new grounds of appeal depending on the circumstance and further takes away the inherent power of the courts to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Therefore, the proposal by the stakeholder was accepted.

Clause 59

140. Delete Clause 59 the proposal to eliminate the discretionary power of Tribunals and courts to allow the addition of new grounds for appeals on application, thus limiting taxpayers' appeals to the grounds stated in the original objection. This is against the taxpayer's right to fair legal proceedings and the right to adduce evidence. There ought to be a provision allowing taxpayers to introduce new grounds where there is discovery of facts or evidence pertaining to a tax dispute of which the taxpayer was not aware at the time of filing the objection.

Committee Observations

The Committee agreed with the stakeholder proposal for deletion.

Clause 60

141. Amend Clause 60 by inserting a new provision requiring the Commissioner to ensure that the system will comply with the relevant data protection laws in light of the current data privacy requirements such as conducting a data protection impact assessment.

Committee Observations

The Committee observed that the implementation of an electronic system will enhance the capability of KRA to have visibility of trader transactions through electronic invoices (ETims) with a view to assess correct taxes. Therefore, the proposal to insert a new provision was rejected.

Clause 63

142. Delete Clause 63. This could potentially leave taxpayers without recourse in situations where the Commissioner makes an error in an assessment, as taxpayers would be obliged to pay penalties without a remission provision. Waiver of penalties and interest is a critical element towards the settlement of unpaid taxes as it encourages taxpayers to settle principal taxes on the premise that they are likely to obtain a waiver, especially where there are justifiable grounds for accumulation of the penalties and interest.

Committee Observation

The Committee observed that there is a need to remove the discretion in consideration for abandonment or remission of tax, waivers or penalties to provide equity and fairness in treatment of taxpayers. Therefore, the proposal was rejected.

3.7 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)

Clause 2 (b) (persons)

143. Delete Clause 2(b) on the definition of a person. The newly proposed interpretation does not meet the basic canon of taxation that includes Fairness, Simplicity and Administrative ease.

Committee Observations

The Committee accepted the proposal to delete the definition of “Persons” since it was provided for in the Tax Procedures Act

Clause 4 (a)

144. Delete Clause 4(a) (ii) the proposal on Deferment of Foreign Exchange loss and replace it with a new proviso that seeks to restrict the deductibility of deferred foreign exchange losses to a period of 3 years. The instate was of the view that 3 years is a very short period for a company to have turned around the level of debt and ensure that the interest expense is below the required 30% Earnings Before Interest Tax and Depreciation (EBITDA) Increase the period from three years to nine years. The period of 9 years is reasonable and in tandem with the tax losses restriction under the repealed law. Prior to 2021, foreign exchange losses were carried forward indefinitely.

Committee Observations

The Committee extended the period to 5 years which is sufficient for individuals to claim foreign exchange losses. Therefore, the proposal was rejected.

Clause 5 (a) (ii)

145. Amend Clause 5(a)(ii) by deleting the words “disallowed against the employer’s income” and substituting them with “Provided that where the employer elects to disallow the club entrance and subscription fees, the same shall not be taxable on the employee.” As currently drafted, the club entrance fee and subscription fee will not be taxable on either the employer or the employee. This may lead to revenue leakage.

Committee Observations

The Clause was amended to read: (fa) “club entrance and subscription fees allowed against an employer’s income” to remove the element of double taxation. The Committee, therefore, rejected the proposal to delete

Clause 10

146. Amend Clause 10 the proposal on digital assets tax by reducing the proposed rate from 3% to 1.5%. Further, the Institute recommended that the Government empowers the Cabinet Secretary in charge of National Treasury and Economic Planning to develop Regulations to guide the implementation of the new law. Reduction of the rate may encourage compliance and imply equity in taxation of the digital economy. Also, the Regulations will clarify the scope and eliminate any ambiguities that may emanate from the new law

Committee Observations

The Committee observed that the rationale for gross Turnover at 3% is to make it easy for trading platforms to comply. If this was taxed at gain the Authority appreciates the difficulty that trading platforms would have to isolate gains made by millions of traders. Their proposal was therefore rejected.

Clause 12 (a)

147. Delete Clause 12(a) the proposal on disallowing expenditure or loss where the invoices of the transactions are not generated from an electronic tax invoice management system. E-TIMS is in the piloting stage, it may require some time before it is relied on in enhancing compliance in other areas apart from VAT. Where the Government is ready to extend it to Corporate Income Tax (CIT), it is advisable to ensure that there are enough stakeholder engagements to ensure that genuine expenses are not left out such as accruals, provisions and interest. Further, it could negatively affect Micro-Small and Medium Enterprises (MSMEs) which could be edged out of business by compliant large firms/multi-nationals. This will negatively affect the businesses at the bottom. In addition, the approval process envisaged for invoices generated without e-TIMS will require more manual power being hired by KRA to process the requests speedily otherwise, there is a risk of crippling businesses.

Committee Observations

The Committee observed that the eTIMS system was in place and the Commissioner would provide administrative guidelines to clarify the issues raised on the implementation of the system. Therefore, the proposal to delete was rejected.

Clause 17

148. Delete Clause 17 the proposal on taxing all other income (except welfare contributions, joining fees and subscriptions) accrued by a member's club or trade association. This will encourage national health improvement as most clubs enable members to recreate and expand business opportunities. Further, members of clubs and associations are not profit making and the extra income is to support their activities as opposed to having to increase membership fees to meet their day-to-day expenses. The provision will discourage membership in clubs

Committee Observations

The Committee observed that since member clubs and trade associations are carrying on business as other taxpayers and in the same environment, it is discriminatory not to tax income from their businesses. Therefore, the proposal was rejected.

Clause 20 (a)

149. Amend Clause 20(a) the proposal on Digital Content monetization by reducing the withholding tax rate to 5% and introducing a rate of 20% for non-resident digital content creators. The high rate may negatively impact the cash flow of digital content creators.

Committee Observations

The Committee accepted the proposal of reducing the withholding tax rate from 15% to 5% to harmonize with the existing rate.

Clause 20 (c)

150. Delete Clause 20(c) the proposal to introduce a requirement for taxpayers to remit withholding tax to the Commissioner within twenty-four hours where the tax has been deducted on qualifying payments. The timeline is not applicable/practicable thus taxpayers are vulnerable to non-compliance, thus increasing time wasted in firefighting unreasonable targets.

Committee Observation

The Committee agreed with the stakeholder that 24 hours was a limited time and amended the time frame for remitting withholding tax to 5 working days. It thus amended the time frame for remitting to 5 working days.

Clause 23 (c) (b)

151. Delete the Second Schedule of the Income Tax Act paragraph (IA) on investments located outside Nairobi City County and Mombasa County. The proposed amendment is likely to introduce unnecessary controversies as it appears, though not expressly, to empower the Commissioner to determine which businesses can or cannot be carried out in the specified Counties. Besides, the proposed amendment is introducing additional restrictions to a provision that already has a myriad of restrictions.

Committee Observations

The Committee observed that the selection of Mombasa County and Nairobi County was discriminatory and thus deleted Clause 23 (c) to allow individuals investing in any part of the country to benefit from the investment deduction. The Committee, therefore, accepted the proposal.

Clause 24 (b)

152. Delete Clause 24(b). The proposal to increase the marginal tax rate will reduce the disposable income of the affected employees. This will in turn impact savings and consumption. Also, the proposal is coming at a time when the Government is proposing to increase the National Hospital Insurance Fund (NHIF), introduce the National Housing Development Level (NHDL), already increased pension contributions and a high rate of inflation.

Committee Observations

The Committee amended the tax bands by introducing a new band of KSh. 500,000 to KSh. 800,000 to be charged 32.5% while a 35% tax rate will be applicable for incomes above KSh. 800,000. Therefore, their proposal was rejected.

3.8 DELOITTE EN TOUCHE

Clause 4 (a)

153. Amend Clause 4(a) to increase the duration for deductibility from the proposed three years to ten years. This would be in line with the now-repealed tax loss carry-forward period. The increase of the period of deductibility from three years to ten years would ensure that taxpayers are afforded sufficient time to normalize their EBITDA position and thereafter claim deferred realized foreign exchange losses

Committee Observation

The Committee amended the foreign exchange losses period to 5 years, the period is sufficient for individuals to claim foreign exchange loss. The Committee rejected their proposal.

Clause 5

Amend clause 5(a) paragraph (ii)(fa) by deleting the words ‘disallowed against the employer’s income’ because the proposal in the Bill will lead to double taxation. The amounts will be taxed on the employees as a benefit, disallowing the amounts against the employer’s income effectively means that the amounts are also taxed on the employer.

Committee Observation

The proposed amendment was adopted. The Committee amended the phrase “*disallowed*” to “*allowed*” to avoid the element of double taxation. Their proposal was adopted.

Amend Clause 5(b) paragraph (fa) as follows- *‘any amount paid or granted to any employee to reimburse an expenditure incurred for the purposes of performing official duties provided that any assets purchased shall be under the sole ownership and control of the public or private entity making the reimbursement.’*

Committee observation

The Committee considered the proposal in light of what the stakeholder was proposing and observed that the provision in the bill relates to the duties performed only by public officers. Their proposal was rejected.

Clause 6

154. Amend Paragraph 2 (b) of Head B of the Third Schedule to the ITA by introducing the following proviso – *‘Provided that profits repatriated by a non-resident person with a permanent establishment in Kenya for the year of income 2024 and each subsequent year of income shall be taxed at a rate of three shillings for every twenty shillings.’* This will align with the taxation of dividends paid by local entities.

Committee Observation

The Committee rejected the proposal and amended it to include a tax rate of 15%.

Clause 12 (b) (iv)

155. Amend Clause 12(b)(iv) the proposal to allow taxpayers claiming a deduction of interest restricted under the EBITDA-based interest restriction mechanism in the subsequent three years of income to the extent that the deduction of interest on loans from non-resident persons does not exceed 30% of EBITDA by amending the period within which taxpayers can claim interest expenses restricted in line with the EBITDA based interest restriction mechanism be increased from the proposed three years to ten years.

Committee Observation

The proposed amendment was not adopted. The Committee observed that extending the period for carrying forward the restricted interest will defeat the purpose of interest restriction hence their proposal was rejected.

Clause 23

156. Delete Clause 23 the proposal to amend the Second Schedule on Investment Allowance which seeks to restrict the investment deduction of 100% to hotel buildings and buildings and machinery used for manufacture. The amendment proposed under the Bill is restrictive and may serve as a disincentive to investors on areas outside the specified ones e.g., hospital buildings, commercial buildings and education buildings including hostels will no longer be eligible for investment deduction. It is believed that this move might be against the Government’s intention to decongest cities while ensuring that growth is spurred in the rural areas, especially in this era of devolution.

Committee Observation

The Committee accepted the proposed deletion as this will spur growth in other parts of the country.

Clause 7

157. Amend Section 10 of the Income Tax Act that will compel taxpayers to forfeit any WHT paid on a payment for which a subsequent audit adjustment is made. Under the proposal, the withholding tax paid shall not be refundable or available for deduction against income where an audit adjustment has been made in respect of such payment. It is believed that this amendment is unfair to Taxpayers since it results in double taxation of the same income/taxable base and deprives taxpayers of taxes already paid to KRA.

Committee Observation

The Committee observed that the resident entities are only withholding agents and do not suffer the taxes they seek to be refunded. The issue of overpayment or double payment does not arise hence their proposal was rejected.

Clause 20 (b)

158. Delete Clause 20(b) the proposal to remit Withholding Tax to the Commissioner within twenty-four hours where the tax has been deducted on qualifying payments. Currently, taxpayers are required to remit WHT on or before the twentieth day of the month following the month in which the deduction was made. It is believed that this amendment will exert strenuous pressure on Taxpayers to meet the expected obligation. Further, the compliance cost and administrative burden will significantly increase in the short term for both Taxpayers and the Kenya Revenue Authority, which contradicts the canon of convenience and economy.

Committee Observation

The Committee accepted their proposal with amendments to include a time frame of remitting withholding tax to 5 working days instead of 24 hrs.

Clause 24 (b) (vii)

159. Amend the proposal to set the WHT rate of payments made in respect of digital content monetization at 15%. The proposed 15% tax rate is unusually high for residents and permanent establishments in comparison with the 3% and 5% rates applied on contractual fees and management or professional fees, respectively. It is worth noting that, this will reduce ambiguity in the tax rate applicable in case the prevailing rates differ for management or professional fees and digital content monetization, noting currently some taxpayers consider payment to content creators subject to WHT as management or professional fees. We propose the WHT rate is reduced from 15% to 5%.

Committee Observation

The Committee accepted their proposed amendment to harmonize it with other Withholding tax rates.

3.9 PFK TAXATION SERVICES LIMITED

Clause 36

160. Delete the proposal to compel a taxpayer to deposit 20% of disputed taxes, or equivalent security to the Commissioner prior to lodging an Appeal with the High Court in the event the Tax Appeals Tribunal (Tribunal) rules in favor of the Commissioner. The Bill further proposes that if the taxpayer receives a High Court judgment in their favor, the Commissioner will be required to "credit" the deposited sum or security to the taxpayer within 30 days of the final determination of the matter by the High Court. According to PKF, this proposal violates Article 48 of the Constitution of Kenya 2010, which provides that: "the State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice".

Committee Observation

The Committee adopted the proposed deletion of the Clause, observing that the right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice. The high court has the discretion to determine the security once a matter is before the court.

Clause 2

161. Amend Clause 2 the proposal to substitute the definition of winnings to mean payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act without deducting the amount staked or wagered. The Institution recommends that the definition of winnings should be the payout less the amount staked or wagered from betting, gaming, lottery, a prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act since the proposed amendment will be detrimental to the betting and gaming industry because it will substantially reduce the winnings to the punters and will negatively impact the business of all the betting and gaming industry players who pay substantial taxes to the Government.

Committee Observation

The Committee agreed with the stakeholder on the definition of "winnings" to mean the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act excluding the amount staked or wagered in that particular transaction."

Clause 4(a)

162. Amend Clause 4(a) to provide that realized foreign exchange losses will only be deferred by a company whose gross interest paid or payable to a non-resident person exceeds 30% of the company's EBITDA in any year of income and that the deferred foreign exchange losses shall be claimed over a period of three years from the date the losses was realized. According to the Firm, it is worth noting that the proposal will encourage investors and business owners to finance their companies with local debt at their early stages of operation since interest expense on locally acquired loans will be fully deductible for income tax purposes. However, the proposal is ambiguous as it is not clear if the deferred foreign exchange losses will be claimed equally over three years and if their claim ability will still be subject to the 30% EBITDA test. Additionally, it would be imperative that Parliament considers capping this provision only on realized foreign exchange losses resulting from loans from related non-resident

entities. Foreign exchange losses from trading activities and loans from Kenyan resident persons should not be included in this provision to realize the full intended purpose of Action 4 of the BEPS project which seeks to prevent excessive interest payments by foreign-owned companies.

Committee Observation

The Committee rejected the proposed amendment. However, the Committee amended the period of claiming foreign exchange losses from 3 years to 5 years as the increased period would be enough time for claiming foreign exchange losses.

Clause 5

163. Amend Clause 5 proposal to introduce a new Section 5(2) (fa) to expressly include club joining and subscription fees as a benefit taxable on the employee, where the same has been disallowed against the employer's income. The organization proposes to have the amounts allowed as deductible expenses on the employer and taxed as a benefit on the employee or vice versa as per the current provision. According to PKF, the proposed amendment will lead to double taxation on the same amount attributable to club joining and subscription fees. This is because, while the amounts will be taxed on the employees as a benefit, disallowing the amounts against the employer's income effectively means that the amounts are also taxed on the employer.

Committee Recommendation

The Committee associates itself with the stakeholder's comments. However, it rejects the proposed deletion and amends the clause to read: (fa) "club entrance and subscription fees *allowed* against an employer's income" to remove the element of double taxation.

Clause 5 (a) (fa)

164. Amend Clause 5 deleting paragraph (a)(fa) because the proposed amendment is discriminative and should be dropped as it seeks to exempt public officers from being taxed on amounts advanced to them as per diem while other employees in the private sector are taxed on any per diem amounts in excess of KSh 2,000 expended per day, if the excess amount is not supported by receipts or invoices. It further violates the principles of equality and good governance which include accountability as it could lead to misuse of public funds.

Committee Observation

The Committee rejected the proposed amendment as this provision was in respect of public officers only.

Clause 10

165. Delete clause 10 which proposes to introduce a new Section 10(3) to compel taxpayers to forfeit any WHT paid on a payment made to a non-resident person for which a subsequent audit adjustment is made i.e. WHT paid shall not be refundable or available for deduction against income where an audit adjustment has been made in respect of such payment. According to PKF, the proposed amendment will largely affect intragroup service charges between related parties where an adjustment is made on the service fees paid to related non-resident entities and WHT had already been deducted and remitted to the KRA. Further, the proposed change may impact on the attractiveness of Kenya as a hub for multinationals.

Committee Observation

The Committee observed that the rationale for imposing a low rate of tax at gross fair market value is to make it administratively possible for trading platforms to comply. The Committee understands the administrative difficulty that would be imposed on trading platforms if the tax was imposed on gains.

Clause 20

166. Amend Clause 20 by amending the withholding tax rate to 5% in tandem with other withholding tax rates applicable on other services provided by resident persons to avoid a situation where the resident digital content creators will be in perpetual income tax credit positions. Amendment to S This may further lead to noncompliance in declaring the full amounts for taxes by the resident digital content creators. It is worth noting that the Bill does not further provide a threshold for the taxable amount implying that any income will be taxable regardless of the value earned. Parliament should consider providing an aggregate threshold of KSh. 24,000 per month for the payments to qualify WHT in tandem with payments for other professional services paid to resident persons. PKF highlights that the proposed amendment to compel the taxpayers to remit WHT within a 24-hour deadline will exert strenuous pressure on taxpayers to meet the expected obligation as taxpayers will be forced to monitor their transactions daily and check their cash flow status before remitting the WHT on qualifying transactions.

Committee Observation

The Committee agreed with the stakeholder that 24 hours was a limited time and amended the time frame for remitting withholding tax to 5 working days.

Clause 24

167. Delete Clause 24(b)(I) The proposed amendment will be detrimental to the middle class in the economy which is the main driver of consumption in the economy. Reduced disposable income for the middle class will have a ripple effect on the economy and may lead to job losses in diverse sectors of the economy that are driven by the middle class.

Committee Observation

The Committee rejected the proposed deletion. However, the Committee amended the clause by introducing a new band of Ksh 500,000 –Ksh 800,000 to be charged at 32.5% while income above Ksh 800,000 per month will be charged at 35% this will enable the government to raise more revenue.

Clause 28

168. Delete Clause 28. In the case of goods listed in section B of Part I of the First Schedule, eight percent of the taxable value, effective date of assent. PKF proposes that the VAT rate on petroleum products be retained at 8% to avoid an increase in prices which will have a ripple effect on all other sectors of the economy including the increase in inflation rates.

Committee Observations

The Committee rejected the proposed deletion noting that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 30

169. Amend Clause 30 by deleting (a) which is the proposal to impose two mandatory conditions a taxpayer must meet before claiming input VAT i.e. a taxpayer must have the proper documentation as prescribed under the VAT Act and that the supplier has declared the supply before claiming the enactment of the proposal imposes an undue compliance burden on taxpayers of having to monitor if suppliers have declared output VAT. The responsibility of declaring output VAT is on suppliers and KRA is mandated to verify the same. This responsibility cannot be passed on to purchasers who do not have access to the supplier's systems and hence cannot verify this.

Committee Observation

The Committee rejected the proposed deletion. It observed that the eTIMS would disallow an individual from claiming input VAT twice.

Clause 54(b)

170. Amend Clause 54 by deleting (b) the proposal to reduce the timeline within which VAT Withholding should be remitted, from the 20th of the following month to within three days after the deduction is made. According to PKF the practicality of this proposed amendment will be an outright challenge to taxpayers, as it will create cash flow constraints. Taxpayers would need to set aside funds promptly to meet the shortened remittance deadline of the tax thus potentially affecting their working capital and financial planning, particularly for smaller businesses that may already operate with limited liquidity. Cash flow challenges can hinder business operations and growth thus leading to reduced tax collection by KRA. PKF proposes that the timeline of remitting VAT withholding remains as per the current provisions.

Committee Observations

The Committee observed that the 3-day timeline period will cause administrative challenges to business. However, the Committee rejected the proposal but amended sub-clause (b) by increasing the remittance period to 5 working days.

Clause 41

171. The Bill proposes to introduce a requirement for bookmakers to pay Excise Duty on betting and gaming, offered through a platform or other medium, within 24 hours from the closure of the transaction day. Accompanying this proposal is the proposed position that the close of the transaction day is midnight of that day. The Bill also empowers the Commissioner, by notice in the Kenya Gazette, to require any sector to remit excise duty collected within 24 hours. According to PKF, the proposal does not take into account the additional investments that businesses will require such as additional staff to ensure 100% compliance, any Enterprise resource planning (ERP) system integrations, alternative payment methods, additional cash flow, etc. This burden is cumbersome and unnecessary and contravenes the four pillars of a good tax system i.e. fairness, certainty, convenience and efficiency.

Further, it is worth noting that the Firm notes that empowering the Commissioner to require any sector by notice in the Kenya Gazette will create a similar compliance burden for players in that sector.

Committee Observation

The Committee observed that currently the remittance of taxes within the betting industry is done within twenty-four hours therefore the proposed amendments were rejected.

Clause 43 (a) (v)

172. Amendment to the First Schedule to the Excise Duty Act in Part I by deleting the word imported appearing in the description "Imported sugar confectionary of tariff heading 17.04" appearing in Paragraph 1 and inserting - Sugar excluding sugar imported or locally purchased by a registered pharmaceutical manufacturer at a rate of KSh 5 per Kg. It is the opinion of PKF that this proposed amendment will increase the cost of production of goods especially for exporters of goods manufactured with sugar and thus should be rejected. Alternatively, the proposal can be amended to classify the exportation of excisable goods as being zero-rated to enable local manufacturers to claim the excise duty on raw materials and remain competitive in the export market.

Committee Observation

The Committee agreed with stakeholders by deleting the clause to protect the local industry to grant it a competitive advantage.

Clause 43 (a) (ii)

173. Amend Clause 43 by deleting (a)(ii) amendment to the First Schedule to the Excise Duty Act in Part I by deleting the tariff description " *'Imported white chocolate of heading 1704; chocolate and other food preparations containing cocoa of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00.'* This proposal seeks to re-introduce Excise Duty on local chocolates and other food preparations containing cocoa. The Finance Bill 2022 removed Excise Duty on locally produced chocolates. Should the Bill be adopted as is, Excise Duty will be applicable to locally manufactured chocolates and will reverse the progress made by the local chocolate manufacturing players stifling their growth. It is therefore the recommendation of PKF that this proposal is rejected as it will adversely affect the industry and reverse any gains made.

Committee Observation

The Committee rejected the proposed amendment observing that, the Clause was a clean-up and that it was important to protect the local manufacturer and proposed to insert the word 'imported' after '1704'. The proposal was rejected.

3.10 GRANT THORTON ASSOCIATES

Clause 2

Amend Clause the definition of winning in a manner that will not include the amount that has been staked or wagered.

Committee Observations

The Committee agreed with the stakeholder on the definition of “winnings” to exclude the amount staked or wagered in that particular transaction.”

Clause 4

Amend Clause 4 by deleting ‘three years’ immediately after ‘*not more than*’ and substituting it with ‘*seven years*.’ Even though the proposal seeks to align the deferral of realized foreign exchange to the proposed amendments on interest restrictions rules. However, the introduction of three years period from the date the loss was realized, being the duration, a person is eligible to claim realized foreign exchange loss will result in taxpayers forfeiting it where the interest restriction rules still apply. This will inadvertently put pressure on taxpayers to clear off debts within 3 years.

Committee Observations

The Committee amended the period of claiming foreign exchange losses from 3 years to 5 years as the increased period would be enough time for claiming foreign exchange losses.

Clause 24 (b) (vii)

174. Amend Clause 24(b)(vii) by reducing the proposed rate to 5% and that Withholding Tax to apply to payments above KSh. 24,000. With the increased use of social media and online services, a huge number of Kenyans have been able to monetize their social media presence into potential audiences who could buy products endorsed by them. These individuals popularly known as influencers or content creators have partnered with various businesses to endorse and market different products through their various social media platforms. These partnerships have resulted in the ability of these influencers to earn a decent income. This industry primarily hires young Kenyans who would otherwise not be in formal employment.

Committee Observation

The Committee accepted their proposal to reduce the withholding tax rate to 5%, this will enhance compliance in the sector. The new rate is to harmonize it with other professional cadres

Clause 20

175. Amend Clause 20 by deleting (b) (3AB) which requires that any person who deducts withholding rental income tax should remit the amount deducted within twenty –four hours (24). Remitting taxes places an unfair burden on the agent deducting the tax. In addition, the proposal is contrary to the guiding principle of administrative efficiency when it comes to tax which states that the cost of compliance by taxpayers, should be kept at a minimum level as much as possible. We recommend that the time for remission of the tax be retained at the current remission date of the 20th of the following month, this would allow the agent time to reconcile the amounts paid while also reducing the additional pressure of remitting within such a short period.

Committee Observation

The proposed deletion was rejected. However, the Committee amended the time frame to remit withholding tax to 5 working days.

Clause 6

176. Amend Clause 6. The effect of this provision if it were passed would mean that the choice to operate a branch/PE or a subsidiary will be heavily influenced by the effective tax rate on the incomes sourced from Kenya.

Committee Observation

The Committee amended by including a repatriated tax rate of 15%, this will be in alignment with the rate of the withholding tax applicable on dividends paid by a resident for equity and fairness. Their proposal was accepted.

Clause 7

177. Delete Clause 7 for it goes against tax where a taxpayer shall not pay more or less than they ought to.

Committee Observation

The Committee observed that the issue of overpayment or double payment does not arise and a taxpayer shall not pay more or less than they are to. Their proposal was rejected.

Clause 24

178. Amend Clause 24 (b) (x) by revising the rate of Turnover Tax to 1%. Most taxpayers affected by ToT are within the Micro, Small and Medium Enterprises that require sufficient support including legislatively, to enable them to plough back profits and expand. The Turn Over Tax has to be revised.

Committee Observation

The Committee observed that this was a COVID-19 measure to cushion small businesses from the effects. The Committee rejected the proposal.

Clause 2

179. Amend Clause 2. The proposal as per the definition of the bill seeks to include the whole amount placed by the punter and the winnings/ amount that they receive upon a successful bet as liable to tax. The taxable value will further incorporate WHT and Excise duty that would result in a lower take home for the punter. This will discourage punters from making wagers resulting in less revenue being collected from the betting industry.

Committee Observation

The Committee accepted the proposal of excluding the amount staked or wagered from winnings.

Clause 33

180. Delete Clause by deleting paragraph 153 A which seeks to exempt Liquid Petroleum Gas (LPG) consequently removing the 8% VAT that was charged to it. The proposal be zero-rated since exempting LPG does not make it cheaper the reasoning for making LPG affordable.

Committee Observation

The Committee accepted the proposal to zero-rate LPG.

Clause 61

181. Delete Clause 61 which proposes to revise the penalty from 75% to double the amount of the tax shortfall. This move will see taxpayers making false declarations penalized heftily.

Committee Observation

The Committee observed that increasing the penalty to double the amount of the tax shortfall would be excessive and disproportionate to the offense, especially given that there are already other penalties and sanctions that can be imposed on taxpayers who engage in fraudulent or negligent conduct. Therefore, the proposal was accepted.

Clause 59

182. Amend Clause by deleting the words “*unless the Tribunal or Court allows the person to add new grounds*”. The proposed provision denies the appellant the opportunity to add more grounds for appeal. This violates the taxpayer’s rights to a fair hearing as they will only be restricted to information submitted at the objection stage and cannot respond to new items brought about by the commissioner’s objection decisions

Committee Observation

The Committee observed that the proposal restricts the power of the court to admit new grounds of appeal, taking away the inherent power of the courts to make such orders, hence the proposal was accepted.

Clause 36

183. Delete Clause 36 which introduces the requirement for taxpayers appealing to the High Court to deposit 20% of the judgment sum or equivalent in security with the KRA before filing the Appeal. The Supreme Court on 17 February 2023 delivered a judgment in the case of **Westmont Holdings SDN BHD v Central Bank of Kenya & 2 others** [Petition No. 16 (E023) of 2021] (the Westmont Case), where the Court provided principles that ought to be considered by every Court in imposing security for costs. in addition, this will limit the taxpayer’s right to access justice. This is contrary to Article 48 of the Constitution of Kenya.

Committee Observation

The Committee adopted the proposal to delete this clause, observing that the right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice. The high court has the discretion to determine the security once a matter is before the court.

Clause 76

184. Delete Clause 76 which proposes to introduce a 3% Housing Levy on both employees and employers. This will subject the taxpayer to double taxation as the taxpayer will be deducted the housing levy at 3% and then taxed when the contributions accrue. We note that the deduction will result in a deduction in an employee's deduction while also increasing the employer's contribution. We propose that this amendment is deleted.

Committee Observation

Clause 76 was amended to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 24

185. Amend Clause 24 by deleting (b) (iii) for the provision will discriminately affect sole proprietors whose tax is calculated on their graduated income, compared to companies whose income is charged at the corporate rate of 30%. The provision has adverse effects on sole proprietors which is against the principles of taxation on equality.

Committee Observation

The Committee observed that reducing the corporate tax to 30% will enhance fairness and equity and encourage investors to invest in the country. Their proposal was rejected.

Clause 43 (b) (iv)

186. Amend Clause by deleting (b)(iv) for the proposed rate will amend the excise duty payable on betting by increasing from 7.5% to 20%. close to three times the current rate which is quite high.

Committee Observation

The proposed deletion was rejected. However, the Committee amended the proposed rate to 12.5% to keep the industry competitive.

3.11 INSTITUTE OF PUBLIC FINANCE

Clause 2

187. Amend Clause 2 by redefining the definition of "winnings" to include only what the punter gets above the amount wagered. This may hinder the growth of a sector that has the potential to increase revenue collections, other options including restrictions on advertising should be considered. Amend Section 2(b) by providing further clarification on who will be required to register to pay taxes where the digital content creator is a minor. Digital content creation is one of the fastest-growing sectors in the advertisement industry. It has the potential to generate more revenues for KRA.

Committee Observation

The Committee agreed with the stakeholder on the definition of "winnings" to mean what the punter gets above the amount.

Clauses 9 and 24

188. Amend Clause 9 and 24 (x) which proposes to reduce the turnover tax band from the current KSh 1 million to KSh 50 million to KSh 0.5 million to KSh 15 million while at the same time increasing Turnover Tax from 1% to 3% by retaining the rate of 1%. The proposed measures may be construed as punitive to small businesses therefore we recommend retaining the rate at 1 percent.

Committee observations

The Committee amended the turnover tax bands from KSh 1million to KSh 25 million. The turnover tax rate was retained at 3% since this was cushioning businesses against the effects of COVID-19. Their proposal was rejected.

Clause 28

189. Amend section 5 by retaining the current rate of VAT on petroleum products (except LPG) to VAT of 8 percent. As the intention may be to align with the international best practice of having a standard rate and a zero rate, the proposal will increase the cost of fuel. This will have an impact on the cost of doing business across sectors and the cost of living.

Committee Observations

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. Therefore, the committee rejected the proposal.

Clause 30

190. Amend Clause by deleting (a) which proposes to make it mandatory for a purchaser to have proper documentation, including invoices, and to also ensure that the supplier has declared the supply before claiming input VAT. Input VAT deduction will be allowed if both requirements are met which is a deviation from the past where input VAT deduction was allowed if either of the requirements were met. Effectively, this will make it harder for a taxpayer to comply and raise the cost of tax compliance and may reverse gains already made through TIMS and eTIMS.

Committee Observations

The Committee observed that the eTIMS would disallow an individual from claiming input VAT twice. Therefore, the proposal was rejected.

Clause 33

191. Amend Clause 33 paragraph 153 of the First Schedule that proposes to exempt Liquefied Petroleum Gas (LPG) from VAT by zero-rating LPG gas. VAT exemption implies that LPG suppliers will have

to incur a cost in the form of input VAT which they may pass on to end consumers therefore, the measure may not attain the targeted relief to households.

Committee Observation

The Committee adopted the proposed amendment observing that the Zero-rating of LPG will make it more affordable.

Clause 36

192. Delete Clause 36 which proposes a 20% of disputed tax to be deposited before appealing to the high court. The proposal may be a barrier to filing an appeal for some taxpayers, particularly smaller businesses and individuals who may not have the financial resources to meet the 20% deposit or security requirement. The deposit requirement could create a perception of bias in favor of KRA, as taxpayers may feel that the financial burden of appealing a decision is an unfair advantage given to the tax authority.

Committee observations

The Committee adopted the proposal to delete this clause, observing that the right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice. The high court has the discretion to determine the security once a matter is before the court.

Clause 41

193. Amend Clause by deleting paragraph 36A (1) proposes Excise Duty be remitted within 24 hours on betting and gaming. While this proposal will enhance revenue collection for the government, it will be cumbersome for taxpayers with a significant number of transactions and may lead to additional administrative costs.

Committee Observations

The Committee rejected the proposed amendment observing that currently Betting companies remit taxes within twenty-four hours.

Clause 43

194. Amend Clause Part II of the First Schedule by deleting paragraph (vii) The proposal is largely meant to discourage betting, gaming, lotteries, and prize competitions. This proposal may drive some betting companies out of business thus affecting consumption. An increase in excise duty on airtime and data services resulted in a decline in revenue, therefore, an increase in excise duty by three times may result in a decline in revenue.

Committee Observations

The Committee amended the excise duty to 12.5% to protect the sector and make it competitive. The Committee rejected their proposal.

Clause 76

195. Delete Clause 76 which proposes a 3% mandatory housing levy on basic salaries to be voluntary. The introduction of mandatory contributions could place a significant burden on employers, resulting in increased costs of employment. This could potentially lead to job losses or hinder the creation of new employment opportunities.

Committee Observations

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.12 ASSOCIATION OF GAMING OPERATORS OF KENYA

Clause 2

196. Delete Clause 2(a) by retaining the definition of 'winnings and retaining the original definition which indicates 'winnings' are 'gains. Amending the definition of winnings will discourage punters for it is double taxation as the stake is already being charged with excise tax.

Committee Observations

The Committee accepted the proposal to exclude the amount staked from winnings.

Clause 36

197. Delete Clause 36. This is highly affecting and discriminating business operators. If an operator under this regulation were supposed to pay more than 100 million to appeal. With this rule, a company would have serious consequences on the company. Also note that KRA with this rule will be able to collect an enormous amount of money even if not due. This is predetermining the case.

Committee Observations

The Committee accepted the proposal, this will ensure taxpayers are not discriminated and can access justice.

Clause 76

198. Delete Clause 76 which proposes a housing Levy at the rate of 3% reduced to 1% and the levy for individuals who do not already own homes. Some employees already own houses or live at their homes they do not need to homes at such time. The organization argues that Kenya's Gambling Industry tax burden is one of the highest in the world with effective rates ranging from 55% to 65% and the average of developed countries (EU, USA) stands at 20% to 25%. For instance, the organization argues that there are no countries or very few examples that could be found of a market like Kenya where all three forms of taxation are in place (Excise duty 7.5%, Withholding Tax 20% and GGR 15%).

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 43

199. Amend Clause by deleting (vi) of part II of the First Schedule which proposes to increase the excise duty on betting. A declaration by the court quashed these sections stating that paragraphs 4B and 4D of part II of the Excise Duty Act 2015 introduced by section 32 of the Finance Act 2021 are Unconstitutional, Null and of legal effect.

Committee Observation

The Committee observed that there is a need to grow the sector, hence reducing excise duty to 12.5%.

3.13 KENYA ASSOCIATION OF MANUFACTURES

Clause 43(a) (ii)

200. Amend clause 43(a)(ii) to add the words chocolate and other food preparations containing cocoa of tariff numbers 1806.31.00, 1806.32.00 and 1806.90.00. The provision as is in the Bill seems to have combined two items, imported white chocolate of heading 1704 and imported chocolate and other food preparations of tariff numbers 1806.31.00, 1806.32.00 and 1806.90.00. The proposal will have a negative impact on the nascent local chocolate manufacturing industry which only accounts for 10% of all chocolates consumed in Kenya.

Committee Observation

The Committee observed that it was a clean-up and that it was important to protect the local manufacturer and proposed to insert the word 'imported' after '1704'. The proposal was rejected.

Clause 43(a)(iv) –

201. Delete clause 43(a)(iv) seeking to impose excise on pasta both imported and locally produced. This is because there is currently only one company in Kenya manufacturing pasta products called My Pasta Ltd, Kenya imports all the other pasta in the market. Therefore if this duty is imposed across the board, it will drive the cost of local production driving the only player in the market out of business

Committee Observation

The Committee observed that it is important to protect the local industry to give them a competitive advantage. Their proposal was accepted.

Clause 43(a)(v)

202. Delete Clause 43(a)(v) to retain the excise duty only on imported sugar confectionery. This is because the profit margins for these products are very low due to other associated production costs. The Additional taxes will drive several local companies out of business as it will make their products uncompetitive and their products unaffordable.

Committee Observation

The Committee observed that it is important to protect the local industry to give them a competitive advantage. Their proposal was amended.

Clause 43(a) (vi)- Powdered Juice

203. Delete clause 43(a) (vi) proposing to impose excise duty on powdered juice. This is because the imposition of excise duty on powdered juice will make local products uncompetitive.

Committee Observation

The Committee observed powdered juice has the same effect on the population as liquid juices. Applying excise duty on liquid juice and not powdered juice is discriminatory. Their proposal was deleted.

Clause 43(a)(vi)- Imported Cement

204. Amend Clause 43(a)(vi) to exempt the import of white cement (2523.21.00) from the proposed excise duty since there is no local production of the same in Kenya.

Committee Observation

The Committee observed that there is a need to promote the local industries and hence rejected the proposal.

Clause 43(a)(vi) – Paints, Varnishes & Lacquers

205. Amend clause 43(a)(vi) to exempt manufacturers who import varnishes and lacquers from the production of their final product including paper manufacturers, food can manufacturers and furniture manufacturers. Lacquers are coatings used by other manufacturers locally in paper, metal, and furniture sectors to produce products such as food cans and packaging requiring the importation of lacquers since they are not locally manufactured.

Committee Observation

The Committee observed that this will help in increasing government revenue. The proposal was deleted.

Clause 43(b)(x)-

206. Delete clause 43(b)(x) because the introduction of the 15% excise duty places a heavier tax obligation on the alcoholic beverage manufacturers who are already overtaxed. This proposal will make the production of local alcohol uncompetitive making it easier to import from other countries especially those within the EAC.

Committee Observation

The Committee observed that the proposal is meant to discourage such products because of their negative externalities in society. The Committee rejected their proposal.

Clause 43

207. Amend clause 43 to specify the HS codes for the furniture items subject to the proposed excise tax at 30%

Committee Observation

The Committee observed that furniture targeted for excised duty is another furniture of heading 9403. The Committee accepted their proposal.

Clause 33(b) (v)

208. Delete Clause 33(b) (v) and insert a paragraph in the second schedule as a zero-rated supply as opposed to the exempt status. This will help manufacturers realize the full benefit of knocking off certain VAT on exported services, there is a need to have a zero-rated status for manufacturers to ensure they can offset the costs.

Committee Observation

The Committee observed that the exportation of taxable services should remain exempted and exemption of transfer of business as a going concern would imply that businesses do not pay taxes by virtue of being exempted and hence leading to revenue losses. The proposal was therefore rejected.

Clause 34(a) (i)

209. Delete clause 34(a)(i) to retain input and raw materials under second schedule part A of Zero-Rate status as opposed to exempt Noting the differences between exempt and zero-rated.

Committee Observation

The Committee observed that there is a need to retain input of raw materials under zero rated category. They accepted the proposal.

Clause 34(a) (i)

210. Delete clause 34(a)(i) to retain agricultural pest control products under the schedule of Zero-Rated products as opposed to exempt status. The reclassification from Zero-Rated to Exempt will have some significant effects on the Agriculture Sector and the economy. This will increase the cost of production for the suppliers.

Committee Observation

The Committee agreed with this proposal to retain this paragraph in the schedule of zero-rated items.

Clause 33 (xxx)

211. Delete clause 33 (xxx) because it seeks to delete sugarcane transportation from farms to milling factories from the schedule on zero-rated products to exempt. These proposals will not allow sugar millers to offset transport costs thereby passing down those costs to consumers.

Committee Observation

The Committee agreed with this proposal to retain the paragraphs at the schedule of zero-rated items.

Clause 12(a)

212. Delete clause 12(a) or extent the commencement to 2025 to allow businesses sufficient time for compliance. The proposal is onerous since it's not appreciating the nature of certain businesses and the cost implication if they were to comply immediately.

Committee Observation

The Committee observed that the eTIMS system was in place and the Commissioner would provide administrative guidelines to clarify the issues raised on the implementation of the system. Therefore, the proposal to delete was rejected.

Clause 20(c) and 20(b)

213. Delete clauses 20(c) and 20(b) because the 24-hour period to remit tax collections is onerous and an administrative burden on the taxpayers. The cost of compliance will be significant. It violates the principles of a good taxation system i.e., should be convenient and easy.

Committee Observation

The Committee amended the time frame to remit withholding tax to 5 working days. The proposal was accepted.

Clause 36

214. Delete Clause 36 since it seeks to impose a 20% deposit before a taxpayer appeals to the High Court in case of tax disputes. This proposal will violate the constitution, it will prejudice the taxpayer's position in case of a dispute. It will also seriously impact cash flows for a number of businesses.

Committee Observation

The Committee adopted the proposal to delete this clause, observing that the right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice. The high court has the discretion to determine the security once a matter is before the court.

Clause 59

215. Delete Clause 59 since it seeks to limit a taxpayer's right to a fair hearing. It also takes away the court's inherent jurisdiction to consider the possibility and the usefulness of new information in a dispute.

Committee Observation

The Committee observed that the clause restricts the power of the court to admit new grounds of appeal depending on the circumstance and further takes away the inherent power of the courts to make such orders

as may be necessary for the ends of justice or to prevent abuse of the process of the court. The Committee, therefore, agreed with the proposal by the stakeholder and deleted the clause from the Bill.

Clause 61

216. Amend clause 61 to replace the words “double the amount” with “equivalent of the tax shortfall” This will cushion the taxpayers against excessive penalties.

Committee Observation

The Committee observed that increasing the penalty to double the amount of the tax shortfall would be excessive and disproportionate to the offense, especially given that there are already other penalties and sanctions that can be imposed on taxpayers who engage in fraudulent or negligent conduct. Their proposal was accepted.

Clause 62

217. Delete clause 62 or amend clause 62 to include the right of taxpayer’s right to appeal the decision by the Commissioner to ensure fairness and the right to justice.

Committee Observation

The Committee observed that there is a need to ensure that there is an efficient enforcement framework in place in case of non-compliance. The proposal was accepted.

Clause 54

218. Delete clause 54 to allow for the exemption of manufacturers from appointment as VAT withholding agents. The Proposal is based on section 42(1) which provides that the commissioner may appoint a person to withhold 2% of the taxable value on purchasing taxable supplies at the time of paying for the supplies at the time of paying for the supplies and remit the same to the commissioner. Also, the period for remission of tax is onerous and the current period should be retained.

Committee Observation

The Committee observed that the 3-day timeline period will cause administrative challenges to business. However, the Committee rejected the proposal but amended sub-clause (b) by increasing the remittance period to 5 working days.

Clause 76

219. Delete clause 76 since there is a need for a framework to guide the implementation and management of the levy. There is a need for further sustained consultation on the Housing Levy so that the public can appreciate the intent.

Committee Observation

The proposal was amended to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%

3.14 KENYA PRIVATE SECTOR ALLIANCE

Clause 2 (a)

220. Amend Clause 2(a) by retaining the definition of ‘winnings’. The courts put this definition in the following decisions: Tax Appeal No. 304 of 2019 Pecans East Africa Limited vs The Commissioner of Domestic Taxes and Others, and Tax Appeal No. 169 of 2020 Resort Kenya Limited vs Commissioner of Domestic Taxes. In the above decisions, the Tribunal determined the methodology used in calculating winnings refer to payouts by the licensee but do not include the amount staked by the punter. Accordingly, they proposed that the proposal be deleted to retain the original definition of ‘winnings’ which indicates winnings as ‘gains’.

Committee Observations

The Committee adopted the proposal by amending the definition of ‘winnings’ to address the concern of the stakeholder and to align with the decision of the Tax Appeals Tribunal in Commissioner of Domestic Taxes v Pevans East Africa Limited & 6 others (Tax Appeal E003 of 2019 [2022] KEHC 10392 (KLR))

Clause 20 (a) (3AB)

221. Amend Clause 20(a) (3AB) which proposes a reduction of rental income tax be remitted within 24 hours to allow remission of tax on the 9th day of the following month. Proposals may harm cash flows, create admin and compliance issues, and increase costs due to tight tax payment deadlines.

Committee Observations

The Committee rejected their proposal. However, they amended the time to remit rental income tax to be within 5 working days after it has been deducted. The period is sufficient for an agent to remit tax.

Clause 24 (b) (iv)

222. Amend Clause 24 (b)(iv) to take into account the definitions and incentives outlined in the National Automotive Policy, which considers various levels of assembly. The industry is currently not benefiting from the incentives outlined in the Act as it requires higher assembly volume.

Committee Observations

The Committee observed that the proposal is meant to enhance local value addition thus creating job opportunities for the citizens. Therefore, the proposal was deleted.

Clause 28 (a)

223. Delete clause 28(a) that amends section 5(2) of the Value Added Tax, 2013 by proposing to increase VAT on petroleum products and putting petroleum products into the standard VAT category. The increase of 8% will lead to a corresponding increase in the cost of fuel by Kes 12.56 and 12.76 per litre for Diesel and Petrol, respectively, on the current Nairobi pump price of KSh 168.4 and 182.7. further, Oil Marketing Companies (OMCs) will need additional capital to sustain their margins. In 2019 OMCs enjoyed margins of 0.1% with an investment of KSh 1 million. In July 2023, if this proposal passes, OMC margins will drop to 0.05% with an investment of KSh 2 million. The additional cashflow

financing will reduce the OMC margins and profitability hence a reduction in corporate taxes paid to the Government.

Committee Observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal

Clause 30 (a)

224. Delete clause 30(a) that proposes to amend section 17 (2) (a) to the Value Added Tax 2013 by deleting the word “or” appearing in paragraph (a) and substituting, therefore, the word “and”. The amendment is against the Tax principle of simplicity by making it mandatory for a purchaser to have proper documentation, including invoices which will make it easier for taxpayers claiming input VAT as they need visibility of the supplier’s return.

Committee Observations

The Committee observed that the proposal seeks to enhance compliance by sealing a loophole that has long been abused by unscrupulous taxpayers claiming fictitious input tax. Their proposal was rejected.

Clause 30 (b)

225. Delete clause 30 (b) which introduces paragraph 9 immediately after paragraph 8 of section 17(b) to the Value Added Tax Act, 2013, to disallow expenditure or loss incurred where the invoices of the transactions are not generated from an electronic tax invoice system under income tax computation. The proposal will limit the participation of micro and Small Enterprises that are not eligible for VAT registration (Not within the 5 million thresholds under the ACT) from conducting business with bigger enterprises.

Committee observations

The Committee observed that the input-output system only affects VAT-registered taxpayers and MSMEs would not be affected. Therefore, the proposal was rejected

Clause 33

226. Amend First Schedule Part III (iv) paragraph 35 which proposes to put exported services exempt from VAT as opposed to zero-rated. The proposal would affect the deductibility of input tax incurred by the suppliers of such services. This has an adverse ripple effect on the country’s price competitiveness in the supply of cross-border services. We propose that exported services be zero-rated.

Committee observations

The Committee observed that the exportation of taxable services should remain at exempt status this will increase Government expenditure. Their proposal was rejected

Clause 34 (a) (1), (ii) and (iii)

227. Delete Clause 34 (a) (1), (ii) and (ii) that aims to eliminate the zero-rated status of input and raw materials supplied to pharmaceutical manufacturers in Kenya for producing medicaments. Likewise, milk, inputs and raw materials for producing agricultural pest control products, whether locally produced or imported, will no longer be exempted. The counterfeiting and illegal trade of pesticides in Kenya amount to KSh. 11.3 billion, resulting in significant losses in investment this would increase if the proposals go through. This move may further increase pesticide costs, leading to higher prices of food products. Moreover, Kenya's competitiveness in the global horticultural market may decline as it has already lost 13% of the market share to emerging players like Ethiopia, Rwanda, and some South American countries.

Committee Observations

The Committee agreed with this proposal to retain the paragraphs at the schedule of zero-rated items.

Clause 43

228. Delete clause 43 b) (v) that proposes to amend the first schedule of the Excise duty referring to Part II – (4B & (4D), which do not exist as the court has nullified it after their introduction in the Finance Act 2021. The reference case is Constitutional Petition No. E406 of 2021.

Committee Observations

The Committee considered the proposal and agreed to reduce the rate from 20% to 12.5% because the increase was too steep within a short period.

Clause 43 (a) (vi)

229. Amend First Schedule (a)(vi) that proposes the amendment of the First Schedule to the Excise Duty Act to introduce an excise rate of KSh. 5 per kg on imported sugar. The proposal doesn't specify which tariff codes will be affected, leading to excise duty on industrial sugar. This puts sugar-based products in Kenya at a disadvantage, compared to other EAC countries without the duty. Uganda is the only country in the region with industrial sugar, and local demand exceeds the supply. Therefore, we propose excluding industrial sugar from the proposal.

Committee Observation

The Committee observed that it was important to protect the local sugar industry to give them a competitive advantage. Therefore, the Committee agreed to their proposal on protecting local sugar but rejected the proposal on imported sugar for industrial use. Therefore, the Committee agreed on amending the clause by inserting the word 'imported' before sugar where it first appears.

Clause 43 (b) (x)

230. Amend First Schedule (b) (x) that proposes the amendment of the Excise Duty Act to have duty fees charged on advertisements across different mediums. The proposed excise tax increase could harm the

media industry, affecting 21.1% of its advertising income and reducing tax contributions. We recommend removing the clause to prevent such negative impacts.

Committee Observation

The Committee observed that the clause sought to discourage such products because of their negative externalities in society. The Committee, therefore, rejected the proposal by the stakeholder.

Clause 68

231. Delete Clause 68 which proposes to introduce an Export Promotion Levy. The East Africa Customs Control Management Act provides for import duty which addresses the intention of this new proposal. The introduction of additional levies puts Kenya at a disadvantage as a preferred location for investment, especially compared to EAC and COMESA. Kenya imported 14,074 Tonnes of corrugated paper and paperboard worth KSh 1.2 billion, and 129,700 Tonnes of uncoated kraft paper worth KSh. 10.7 billion in 2021. The proposed tax may harm Kenya's production of end products due to a lack of raw materials.

Committee Observations

The Committee observed that the export and investment promotion levy is aimed at boosting local manufacturing, promoting exports, promoting the value chain and creating more jobs in the country by providing aggregation centers in the counties. Therefore, they rejected the proposal.

Clause 36 (a)

232. Delete clause 36 (a) that proposes to introduce a 20% deposit before appealing a disputed tax decision, parties must deposit an amount equal to twenty percent of the disputed tax or security with the Commissioner. This clause infringes on the right to justice enshrined in Kenya's Constitution and will significantly affect taxpayers' cash flows. Tax disputes can take years to resolve, even before the High Court, and the proposal also places additional responsibilities on the Commissioner.

Committee Observations

The committee noted the proposal by the stakeholder and observed that the requirement to deposit 20% of the disputed amount before filing an appeal to the High Court will reduce work capital for business and deny justice for taxpayers where they are unable to raise the amount. Therefore, Committee deleted the proposal in the Bill.

Clause 76

233. Delete Clause 76 which provides for the contribution of an employee and the employer towards the National Housing Development Fund. The Organization proposes to implement a voluntary

contribution system starting January 2024, with employer matching. This approach avoids any challenge to private property rights and ensures constitutionality. Regulations for fund accountability should be developed in the Finance Bill.

Committee Observations

The proposal was amended to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%

3.15 KENYA BANKERS ASSOCIATION

Clause 36 (a)

234. Delete clause 36 (a) that requires payment of 20% of the disputed taxes or security equivalent to 20% of the disputed tax before appeal to the High Court. The proposed provision is unconstitutional for breach of the following rights and fundamental freedoms guaranteed under the Bill of Rights

Committee Observation

The committee noted the proposal by the stakeholder and observed that the requirement to deposit 20% of the disputed amount before filing an appeal on the High Court will reduce work capital for business and deny justice for taxpayers where they are unable to raise the amount. Therefore, the Committee deleted the proposal in the Bill.

Clause 5

235. Amend Clause 5(a) (ii) by deleting and replacing with '*club entrance and subscription fees not taxed on the employer*'. Club entrance and subscription fees are paid to enable employees to undertake business-related activities such as networking and business development. They should thus not be taxed under both the employer and the employee.

Committee Observation

The Committee associates itself with the stakeholder's comments. However, it rejects the proposed deletion and amends the clause to read: (fa) "club entrance and subscription fees *allowed* against an employer's income" to remove the element of double taxation.

Clause 20

236. Delete Clause 20(c) that proposes payment of Withholding Tax within twenty-four hours after the deduction is made. The requirement to file a return and remit withholding tax within twenty-four hours and pay withholding VAT within three days places an impractical compliance burden on the taxpayer which is contrary to the design of a fair tax code which should not impose onerous compliance burdens on taxpayers.

Committee Observation

The Committee amended the time frame to remit withholding tax to 5 working days. Their proposal was accepted.

Clause 43 (b) (ii)

237. Amend Clause 43(b) (ii) paragraph 4 of Part II of First Schedule to the Excise Duty Act by deleting the word “*twenty*” and substituting, therefore, the word “*fifteen*”. A harmonized rate for money transfer services and other fees charged by financial institutions will be convenient for taxpayers and will enhance compliance.

Committee Observation

The Committee observed that it was a clean-up and that it was important to protect the local manufacturer and proposed to insert the word ‘imported’ after ‘1704’. The proposal was rejected.

Clause 24 (b) (i)

238. Delete Clause 24 (b) (i) that proposes to increase the highest PAYE tax band to 35%. Businesses and experts engaged at this level are likely to revert to consultancy engagements instead of direct employment, further denying revenue to the exchequer.

Committee Observation

The Committee considered the proposal; however, it amended it as follows: Between 500,000 to 800,000 32.5% per month. Above 800,000 35% per month. This will enable the government to raise more revenue.

Clause 76

239. Amend Clause 76 which proposes a Housing levy by inserting Clause 31B (7) ‘Provided *that the Contributions made under this Section shall be voluntary.*’ The majority of employees in the banking sector have mortgages repayable monthly and highly subsidized by banks with the employee's take-home being at the statutory minimum of one-third. Any additional levy will lead to a violation of the statutory provision.

Committee Observation

The proposal was amended to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%

3.16 ASSOCIATION OF FUND MANAGERS; CAPITAL MARKETS AUTHORITY; NAIROBI SECURITIES EXCHANGE; KASIB; FUND MANAGERS ASSOCIATION

Clause 76

240. Amend clause 76 to include the requirement that the Fund should be placed under professional management by a licensed Fund Manager.

Committee Observation

The proposal was amended to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%

New Proposals not in the Bill

New Clause

241. Repeal the time cap for exemption of Real Estate Investment Trusts (REITS) in section 96A(4) to encourage the growth of the REITS.

Committee Observation

The Committee acknowledge their proposal however it did not go through public participation hence it was rejected.

New Clause

242. Amend the 3rd Schedule of the Income Tax Act and insert the following new paragraph 'the Corporate rate of tax shall be, in the case of a company newly listed on any securities exchange approved under the Capital Markets Act which has at least ten percent of its issued share capital listed, twenty-five percent for the period of five years commencing immediately after the year of income following the date of such listing. This will encourage private companies to list thus promoting the agenda of the government in promoting the vibrancy of the securities markets

Committee Observation

The Committee acknowledge their proposal however it did not go through public participation hence it was rejected.

New Clause

243. Retain the Capital Gains Tax at 5% as opposed to the proposed 15% considering that the property market is already depressed.

Committee Observation

The Committee acknowledges the proposal however it did not go through public participation hence it was rejected.

3.17 FEDERATION OF KENYA PHARMACEUTICALS MANUFACTURERS ASSOCIATION (PWC)

In a meeting with the Committee held in May 2023, FKPM proposed the following amendments to the Bill

Clause 33 (a) (xxx)

244. Delete Clause 33 (a) (xxx) because where industries and/ or commodities fall under “Exempt VAT” status, the manufacturers are not able to claim their Input VAT and as such the Input VAT becomes part of the manufacturing cost. FKPM members are further investing in newer and bigger facilities. The VAT to build these facilities cannot be claimed. Thus, increasing the cost of construction may make it unfeasible and drive investments to other regional countries.

Committee Observation

The Committee agrees with the Stakeholder because reclassifying the inputs and raw materials from zero-rated to exempt will in the long run increase the prices of fertilizer and pest control costs which will have a significant impact on farmers, who already struggle with low yields due to poor soil quality and inadequate farming techniques.

New Proposal

245. The federation proposes to move the following from the First Schedule (Exempt) to the Second Schedule (Zero Rated) of the VAT Act 2013. Medicaments of specified tariffs numbers; all Medicaments under Tariff Heading 3003 and 3004 manufactured by local Manufacturers.

Committee Observation

The Committee acknowledges the proposal however it did not go through public participation hence it was rejected.

3.18 KPMG CONSULTANTS

In a meeting with the Committee held on May 2023, KPMG proposed the following amendments to the Bill

Clause 4

246. Amend Clause 4 to have a distinction between trading and financing losses. As currently worded, the proposal does not differentiate between Forex losses arising from trading or financing. This may unfairly affect taxpayers who have got significant debt financing in foreign currency and may not get an opportunity to utilize all the losses within the proposed time limit of 3 years.

Committee Observations

The Committee extended the period to 5 years which is sufficient for individuals to claim foreign exchange losses. Therefore, the proposal was rejected.

Clause 6

247. Amend Clause 6 to include payments by the branch to head office to be allowable for corporate tax and introduce a branch repatriation tax. Allowing branch payments to be deductible for corporate tax purposes will not only promote equality among resident and non-resident entities but also deal with potential double taxation loopholes that may exist if branches are not allowed to make deductions on payments made to head offices just like a subsidiary would. The proposed branch repatriation tax will need to be elaborated on further once the government provides the proposed rates of tax.

Committee Observations

The Committee amended the clause to include a rate of 15% that is aligned with the rate of withholding tax applicable on dividends paid by a resident for the purpose of equity and fairness. Therefore, their proposal was rejected.

Clause 7

248. Delete the proposed clause 7 to restrict taxpayers from deducting WHT paid against payments to non-resident persons where an audit adjustment has been made in respect to such payment. This proposal violates the nondiscrimination Articles in Double Tax Avoidance Treaties between Kenya and various countries, especially since the same treatment will not apply to residents. The proposal would lead to double taxation since taxpayers will be unable to get credit for the overpayment on WHT already paid on the disallowed expenses.

Committee Observations

The committee observed that the proposal will likely deter tax planning by multinational entities. Further, they observed that the resident entities are only withholding agents and do not suffer the taxes they seek to be refunded and therefore the issue of overpayment or double payment does not arise. Consequently, the Committee rejected their proposal.

Clause 10

249. Delete clause 10 since if implemented, will lead to multiple instances of double taxation and will unfairly penalize Kenyan holders of digital assets, as compared with other classes of assets. The proposed DAT is not an income tax – rather, it is a gross turnover tax in minimum tax which was recently declared to be unconstitutional in the case Kenya Revenue Authority v Stanley Waweru and Six Others (Civil Appeal No. E591 of 2021). Also, traders of digital assets do not receive their gains on digital assets daily as presumed in the Bill. The proposed clause would therefore amount to anticipatory tax.

Committee Observations

The Committee observed that the rationale for imposing a low rate of tax at gross fair market value is to make it administratively possible for trading platforms to comply. The committee understands the administrative difficulty that would be imposed on trading platforms if the tax was imposed on gains.

Clause 12 (b) (iii)

250. Amend by deleting the proposed clause 12(b)(iii) since the proposal may discourage capital-intensive investments in those sectors which ordinarily have high levels of debt –financing. This may go against the government’s agenda of creating more jobs to alleviate the level of unemployment in Kenya.

Committee Observations

The Committee observed that the proposed amendment does not discourage capital-intensive investments. They amended the clause for correct cross-referencing. The correct reference is 2 (j) (iii) and not 2 (j) (ii).

Clause 20(c)

251. Delete clause 20(c) because the proposal will increase compliance burden and operational costs on the part of the taxpayer. Additionally, there will be significant cash flow implications due to the tax point being at accrual and not receipt of actual payment as contemplated in the definition of the word “paid” under the ITA.

Committee Observations

The Committee observed that the proposal to remit the withheld tax within 24 hours will be costly to businesses given that the time period is being reduced from the 20th of the next month to just 24 hours. Therefore, the Committee proposed to increase the period to 5 working days. Therefore, their proposal was rejected.

Clause 23(c) (d)

252. Amend by deleting clause 23(c) (d) and introduce a new paragraph after (1A) to read as follows: “*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.*” The proposal under the Bill appears to be undermining these industries because there is no chance whatsoever of such business being located within the Nairobi or Mombasa counties and thus would not qualify for the 100% claim under this proposal. There are certain industries that, due to their nature, can only be located outside the counties of Nairobi and Mombasa e.g., agricultural and mining businesses.

Committee Observations

The Committee accepted their proposal as this will spur growth in other parts of the country.

Clause 33 (a)(xvii)

253. Amend by deleting clause 33(a)(xvii) which proposes deleting paragraph 66A. The VAT imposed shall decrease uptake and discourage the use of clean energy in line with the government's commitment to climate action under SDG 13.

Committee Observations

The Committee accepted the proposal to delete Clause 33 (xvii) observing that there is a need to encourage the use of clean energy and conserve the environment.

Clause 33(a)(xxx)

254. Amend Clause 33(a)(xxx) to read as follows: "*all tea and coffee sold for the purpose of value addition before exportation subject to approval by the Commissioner of Customs.*" In addition to the proposed exemption on tea, also consider coffee sold for the purpose of Value Addition before exportation. This exemption will make Kenyan coffee competitive in the international market. Additionally, it will also not alienate coffee farmers due to perceived favorable treatment for the tea sector.

Committee Observations

The Committee accepted the submissions with amendments to include coffee in the phrase to read "*all tea and coffee sold for the purpose of value addition before exportation subject to approval by the Commissioner or Cabinet Secretary.*"

Clause 36

255. Amend Clause 36 by deleting (a) the proposal to deposit a 20% security before filing an appeal. The proposal is likely to exclude taxpayers from accessing justice especially where the amounts in dispute are significant. Further, this proposal is unfair and one-sided as the requirement is on the part of the taxpayer and not the revenue authority especially where the tax in dispute are refunds payable to the taxpayer and the revenue authority is the Appellant.

Committee Observations

The Committee noted the proposal by the stakeholder and observed that the requirement to deposit 20% of the disputed amount before filing an appeal to the High Court will reduce work capital for businesses and deny justice for taxpayers where they are unable to raise the amount. Therefore, the Committee deleted the proposal in the Bill.

Clause 43(a)(iii)

256. Amend Clause 43(a)(iii) the proposal to read as follows: "*by inserting the word imported immediately before the tariff description "Articles of plastic of tariff heading 3923.30.00" and by inserting the expression "and 3923.90.90" immediately after the expression "3923.30.00" appearing in the tariff description "Articles of plastic of tariff heading 3923.30.00".*" The Finance Act, 2022 made a mistake by referring to the provision that was being amended as "*Imported Articles of plastic of tariff heading 3923.30.00*". However, the 2021

Finance Act did not refer to imported articles of plastic. The 2022 amendment was worded in such a way as to infer that the 2021 Finance Act introduced excise duty only to imported plastics. The current proposal will be moot as it is seeking to amend a provision of the law that is non-existent in the first place.

Committee Observations

The proposal was rejected by the Committee. This item has been harmonized with paragraphs (I) and (ii) at fifteen percent.

Clause 48

257. Delete Clause 48 since the proposed amendment may lead to uncertainty on the part of the taxpayer as they may be exposed to multiple amendments of assessments by KRA perpetually.

Committee Observations

The Committee rejected their proposal since this is a clean-up of the Act to ensure that it is clear to which original assessment is being referred.

Clause 54(b)

258. Amend Clause by deleting “*The tax withheld under this section shall be remitted to the Commissioner within three days after the deduction was made.*” Taxpayers appointed as withholding VAT agents will suffer the administrative burden of ensuring that tax withheld is remitted in a timely manner. The 3-day timeline presents a compliance risk as it is extraordinarily short. The proposal will increase the compliance burden and operational costs on the part of the taxpayer. Additionally, there will be significant cashflow implications due to the tax point being at accrual and not receipt of actual payment.

Committee Observations

The Committee observed that the 3-day timeline period will cause administrative challenges to business. However, the Committee rejected the proposal but amended sub-clause (b) by increasing the remittance period to 5 working days.

Miscellaneous Fees & Levies Act

Clause 76

259. Delete Clause for making the scheme mandatory will be punitive to homeowners and those under home ownership schemes.

Committee Observations

The Committee amended the proposal by reducing the rate from 3% to 1.5% and increasing the remittance period to the 20th of the following month after the deduction. The committee recommended that the clause shall become effective following the operation of the regulations. Their proposal was rejected.

New Proposals

260. Amend Section 2 of the Income Tax Act to expand the definition of “Marketable Securities” to include digital assets as follows: “*Marketable security*” includes security of such a description as to be capable of being sold and stock as defined in Section 2 of the Stamp Duty Act (Cap. 480) and digital assets as defined under this Act;” The proposed expansion of the definition of Marketable Securities, if adopted, will increase the government’s tax base by bringing gains from trading of digital assets into the capital gains tax (CGT) regime.

Committee Observations

The Committee acknowledged their proposal however it was rejected since this did not go through public participation.

261. Delete Section 18 (d) (10) of the Income Tax Act. This is potentially a duplication. The Act already contains requirements for a CE entity to file the CbC. With the introduction of the new proposal, subsection 18D (10) should be deleted.

Committee Observations

The Committee acknowledged their proposal however, it was rejected since this did not go through public participation.

262. Amend Section 2 of the Income Tax Act by deleting the words “*ninety-one days*” and replacing them with the words “*one hundred and eighty-three days*.” It is best international best practice for a Permanent Establishment (PE) to be established in a longer time of 6 months. The 6 months is used by many countries including Tanzania and South Africa. Additionally, one hundred and eighty-three days will be in line with the residency requirement for PAYE. As such this amendment will bring uniformity.

Committee Observations

The Committee acknowledged their proposal; however, it was rejected since this did not go through public participation.

263. Amend Section 18D (4) of the Income Tax Act to one year from the financial year end of the group by amending Section 18D (4) to provide as follows: “*The master file and the local file shall be filed not later than twelve (12) months after the last day of the reporting fiscal year of the multinational enterprise group.*” Multinational groups have different financial year ends. Extending the period allows the multinational sufficient time to prepare the master file and meet the reporting requirements. The proposed increase of time to 12 months will also provide sufficient time to Groups with entities having non-December year ends that are not aligned to comply.

Committee Observations

The Committee acknowledged their proposal; however, it was rejected since this did not go through public participation.

264. Amend First Schedule to insert paragraphs 109 & 110. VAT exemption for locally manufactured mobile data enabled devices.

Insert paragraph 109 to read: 109. *‘Locally manufactures data-enabled mobile devices* and 110. *‘input for manufacture of data-enabled mobile devices approved by the Cabinet Secretary responsible for information communication technology. ‘*

The VAT Act does not currently provide for an exemption for locally manufactured mobile devices and inputs for the manufacture of mobile devices. This means that devices manufactured locally lack the competitive advantage over imported devices thus discouraging manufacture and update of locally manufactured devices.

Committee Observations

The Committee rejected the proposal.

3.19 BODABODA ASSOCIATION

New Proposals not in the Bill

265. Introduce a new amendment to The Second Schedule of The Traffic (Driving Schools, Driving Instructors and Driving Licenses) Rules, 2018 that changes the number of fees charged during the issue or renewal of driving license/application for new generation during license (valid for 3 years) from Kshs.3,000 to Kshs.500. Driving of boda-bodas is a business activity taken up mostly by the youth and low-income earners. It's essential to reduce the barriers to entry as much as possible to enable more people to take and make a living out of this business enterprise.

Committee Observations

The Committee rejected the proposal.

3.20 ALCOHOL BEVERAGES ASSOCIATION OF KENYA (KENYA BREWERIES LIMITED/ UDV (K) LIMITED

Clause 20 (c)

266. Delete Clause 20(c) because it will have an adverse impact on cash flows for manufacturers and create an administrative nightmare for the companies involved. Companies will be required to hire more staff to beat the deadline and ensure compliance resulting in increased costs in terms of bank charges and the paperwork of making daily payments. Finally, ABAK informed the Committee that this will result in penalties where mistakes or clarifications need to be made and submissions cannot be made within the 24 hours stipulated.

Committee Observations

The Committee agreed with the stakeholder on the administrative hurdle of remitting Withholding Tax within 24 hours. The Committee, therefore, amended the time from 24 hours and increased it to 5 working days.

Clause 36

267. Delete clause 36, the requirement to make a 20% deposit to the disputed tax. This will negatively impact the working capital and cash flow of most businesses given that the money is held in an escrow account without the capacity to earn any interest and tax disputes can take years to resolve. In addition, the proposal will discriminate and deny aggrieved taxpayers access to justice where they cannot raise the amount in dispute. Also, this will lead to an unfair administration of justice because only the taxpayer is expected to deposit while KRA is exempt from the same rule where the Commissioner appeals a TAT ruling and particularly in respect of tax refund disputes. Finally, the Committee was informed that the proposal does not stipulate when the refund of the 20% should be paid once the dispute is concluded.

Committee Observations

The Committee observed that the requirement to have a party to a disputed deposit 20% of the disputed amount as a security deposit will hinder the right to appeal which is a constitutional right to those who cannot deposit the security and as such limit access to justice and reduce business working capital. The Committee, therefore, accepted the proposal.

New Proposal

Clause 43 (a) (a)

268. Amend the bill and introduce a new clause to repeal the below Part 1(2) of the Excise Duty Act 2015, as the proposal will help in the implementation of the proposed clause 38 of the finance bill. 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.

Committee Observations

The Committee rejected this proposal.

Clause 43 (a) (vi)

269. Amend Clause 43 (a) (vi) to read as follows “*Sugar excluding sugar locally purchased or imported sugar for industrial use*” because the proposal is not specific on the impacted tariff codes therefore its implementation will lead to the imposition of excise duty on Industrial sugar which is a raw material. An increase in Industrial sugar cost will increase the cost of producing products meant for export and further reduce Kenyan companies’ competitiveness in the East African markets. Also, there is no other country in the EAC region charging excise duty on industrial sugar.

Committee Observations

The Committee observed that it was important to protect the local sugar industry to give them a competitive advantage. Therefore, the Committee agreed to their proposal on protecting local sugar but rejected the proposal on imported sugar for industrial use. Therefore, the Committee agreed on amending the clause by inserting the word 'imported' before sugar where it first appears.

Clause 43 (b) (x)

270. Delete Clause 43(b)(x) because applying such a high excise tax increase will affect 21.1% (KES 27.8Bn) of the total advertising income to mainstream media houses which will disrupt the media industry. This will significantly reduce other types of tax contributions by the media industry such as income tax, VAT and employment taxes thus adversely affecting tax collections for the government. Advertising has multiple functions; it serves as a platform to educate people on the responsible consumption of alcohol, gender equality, sustainability, and awareness creation to discourage the consumption of illicit alcohol.

Committee Observations

The Committee observed that the clause sought to discourage such products because of their negative externalities in society. The Committee, therefore, rejected the proposal by the stakeholder.

Clause 43(a) (vi)

271. Delete Clause 43(a)(vi) because Fluting Paper - 4805.19 is used in the packaging of alcoholic drinks and Kenya produced 2,858 Tonnes of HS code 4805.19.90 in 2022, however, it imported 4,035 Tonnes of HS code 4805.19.90 the same year. Unless the Government can illustrate the local capacity of local companies to meet the deficit in demand since imports exceed exports, it is unfair to impose this excise duty on the product which is a raw material for the alcoholic drinks industry.

Committee Observation

The Committee observed that it was important to protect local industry, therefore it amended paragraph (vi) by inserting the word 'non-virgin' before the word 'fluting'. The Committee, therefore, rejected the proposal.

Clause 54(b)

272. Delete Clause 54(b) because it will create an unfavorable operating environment for investors that have invested more than KSh. 3 billion. Most investors have commercial loans to service and the proposed change will unfortunately reduce the cash flow of the investors. It creates an additional negative administrative burden to withholding VAT agents. The requirement to remit the Value Added Tax withheld will require agents to incur extra compliance expenses. The Committee was further informed that the 3-day timeline presents a compliance risk as it is extraordinarily short, and this will have an adverse impact on cash flow creating administrative challenges. Additionally, remitting Withholding Tax within 3 days defies the canon of Certainty in Taxation.

Committee Observations

The Committee observed that the 3-day timeline period will cause administrative challenges to business. However, the Committee amended sub-clause (b) by increasing the remittance period to 5 working days.

Clause 59

273. Delete Clause 59 of the Bill as the proposal is unfavorable as it curtails the taxpayers' right to the proper administration of justice. Parties to a dispute must be provided with the opportunity to amend pleadings or add more grounds of appeal especially where the grounds will be responding to issues that may have arisen and with leave of TAT/court and that will enable the Tribunal to make a decision.

Committee Observations

The Committee observed that the clause restricts the power of the court to admit new grounds of appeal depending on the circumstance and further takes away the inherent power of the courts to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The Committee, therefore agreed with the proposal by the stakeholder and deleted the clause from the Bill.

Clause 72

274. Amend Clause 72 by deleting paragraph with the code 4804.11.00 from the list of goods that will be charged the indicated Exports and Investments, Promotion Levy. HS code 4804.11 is used to make products under HS Code 4819.10 which covers cartons, boxes and cases of corrugated paper or paperboard. Introducing an Export Promotion and Investments Levy on 4804.11 will therefore affect the cost of 4819.10. Finally in imposing this levy, the Kenyan government has not demonstrated to the private sector how it will be used to develop the local industry to meet the local demand for these two products.

Committee Observations

The Committee observed that introducing the item HS Code 4804.11.00 will discourage importation and enable growth in the local industry. The Committee, therefore, rejected the stakeholder's proposal.

3.21 BOWMAN LLP

Clause 2

275. Amend Clause 2 (a) by deleting words "*without deducting the amount staked or wagered.*" The inclusion of the amount staked or wagered within the definition of winnings would be contrary to the definition of winnings adopted by the Tax Appeals Tribunal in Tax Appeal No. 304 of 2019. The proposal would result in double taxation with excise duty and withholding tax is applicable. Withholding tax being part of government efforts to raise revenue may not achieve the intended objectives considering the currently high taxes in the betting sector. Players may opt for unregistered, online, difficult trace or international platforms that do not charge the withholding tax on the amount staked.

Committee Observations

The Committee adopted the proposal by amending the definition of ‘winnings’ to address the concern of the stakeholder and to align with the decision of the Tax Appeals Tribunal in Commissioner of Domestic Taxes v Pevans East Africa Limited & 6 others (Tax Appeal E003 of 2019 [2022] KEHC 10392 (KLR))

276. Amend Clause 2(b) to remove payments to digital content creators (the so-called influencers) from and be taxable wholly under personal income tax, corporation income tax or turnover tax. The proposed withholding tax should ideally be borne by the content creators, the obligation to account for the withholding tax will fall on the paying entities and should the payer fail to withhold and remit the tax, the principal taxes together with penalties and interest will become their liability in line with the provisions of the Tax Procedures Act.

Committee Observation

The Committee observed that the definition was meant to ensure that all taxpayers operating within this sector pay their fair share of taxes in accordance with the Constitution. The Committee, therefore, rejected the proposal.

Clause 5 (d)

277. Amend the clause by deleting the provision regarding the five years and the threshold for start-up companies be increased to KSh. 500,000,000 paragraphs (a). The eligibility of start-ups should not be limited to entities set up in Kenya and the proposal should be amended to provide for how the taxable gain will be computed. This is because most start-ups may not become profitable within a period of five years and the market value of the shares will not have appreciated enough within five years to motivate the employees to sell their shares. Including provisions on how to compute the gain will provide clarity and certainty on the determination of the taxable amount.

Committee Observation

The Committee noted that the proposal to restrict to five years the deferment of taxation of shares option offered to an employee in lieu of cash emoluments by eligible start-ups is aligned to the period a taxpayer is required to keep records and therefore any other period is not justified. The Committee, therefore, rejected the proposal of the stakeholder.

Clause 10

278. Delete Clause 10 since there is currently no legal framework on digital assets in Kenya. Taxation on digital assets can only be applicable after the development of a proper regulatory framework and tax regime on digital assets. This is because the introduction of the Digital Asset Tax may work to stifle a nascent industry in which the government has not invested sufficiently in safeguarding, regulating, or creating value. Further, the tax should be levied on net gain as opposed to gross transaction value and digital assets should be defined properly for purposes of taxation. Finally, the Committee was informed that this would lead to double taxation in terms of DAT and corporate tax to companies that buy and sell digital assets.

Committee Observations

The Committee observed that the clause seeks to introduce subjectivity in the interpretation of the sub-clauses therein and the rate is already provided in the proposed amendments to the third Schedule under Clause 24 of the Bill at 3%.

Clause 20

279. Amend Clause 20 by removing payments to digital content creators from the ambit of withholding tax and being taxable under personal income tax, corporation income tax or turnover tax. The proposed withholding tax should ideally be borne by the content creators, the obligation to account for the withholding tax will fall on the paying entities. There is a possibility that some influencers may demand that their payments be grossed up and the tax burden be borne by the paying entities. This would amount to the paying entities bearing the tax cost. Also, the proposal to remit withholding tax deductions within 24 hours should be deleted. They proposed the deadline remit withholding tax be retained as on or before the twentieth (20th) day of the month following that in which the deduction was made. The proposal will create administrative costs hence increasing the cost of conducting business.

Committee Observations

The Committee observed that the withholding tax rate on digital content monetization is not a final tax and therefore taxpayers can claim excess taxes paid through their annual returns. The Committee further noted the need to harmonize the withholding tax with other professional fees, however, the Committee rejected the proposal by the stakeholder.

Clause 23 c

280. Delete Clause 23(c) because the proposal is likely to create uncertainty in the sector leading to fiscal instability and discouraging investor attractiveness. The amendment would equate investment in Nairobi and Mombasa counties with investment outside Nairobi and Mombasa counties especially where the relevant county is endowed with natural resources which necessitates an investment. The provision is also likely to be contested/challenged by investors setting up outside Nairobi and Mombasa Counties.

Committee Observations

The Committee observed challenges with the proposed clause and therefore adopted their proposal to delete paragraph (b) of subclause 23 (c).

Clause 24 (b)

281. Delete Clause 24(b) because the additional taxes will further reduce employee's disposable income which would otherwise be spent to spur the economy through investments and spending. In addition, instead of overtaxing the few individuals in formal employment who earn monthly salaries of KES 500,000 and above, Government should seek to expand the tax net by taxing other untaxed sectors.

The number of individuals in the bracket is few and the potential revenue from the increased tax rate may not be commensurate to the enforcement measure that KRA may require to undertake to ensure compliance.

Committee Observation

The Committee observed there was a need to amend the tax bands as this would have a positive financial impact on the government and that it was necessary for employees earning more to pay higher taxes. The Committee amended the tax bands for persons earning KSh. 500,000 to 800,000 at 32.5% whereas for persons earning above KSh. at 35%.

Clause 28

282. Delete Clause 28 because increasing VAT on petroleum products will result in an increase in the cost of fuel with the resulting increase in the cost of products and the cost of living taking into consideration Kenya's dependency on fossil fuel and the already high global oil prices. Maintaining the current VAT rate of 8% on petroleum products would provide some relief for consumers and help to mitigate the negative impact on the economy.

Committee Observations

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected the proposal.

Clause 30

283. Delete Clause 30 because the proposal will make it more difficult for taxpayers to claim input VAT deductions. The requirement that both the requisite documents under the Value Added Tax Act and the registered supplier's declaration of the sales invoice in a return must be held before claiming an input VAT deduction is unduly onerous and could result in legitimate claims being disallowed.

Committee Observations

The Committee considered their proposal however, noted that the proposal would disallow an individual from claiming input VAT twice. Therefore, the Committee rejected the proposal by the stakeholder.

Clause 33&34

284. Amend Clauses 33 and 34 by retaining products as zero-rated. Due to the exemption, the relevant suppliers of such inputs will not be entitled to deduct input tax incurred on their Vatable purchases.

This would increase the cost of agricultural and pharmaceutical inputs and negatively impact food security and the cost of living.

Committee Observations

The Committee agreed with the proposal of the stakeholder on the need to zero-rate these products.

Clause 36

285. Delete Clause 36 because some tax disputes run into the billions, and this requirement for a 20% deposit would indeed lockout genuine persons from appealing to the High Court. Further, it will reduce working capital for the appellant during the time the funds are tied up in the deposit account. Alternatively, where security is provided, this increases the cost of business. This will have a negative impact on the economy since funds deposited would be taken out of circulation.

Committee Observations

The Committee noted the proposal by the stakeholder and observed that the requirement to deposit 20% of the disputed amount before filing an appeal to the High Court will reduce work capital for businesses and deny justice for taxpayers where they are unable to raise the amount. Therefore, the Committee deleted the proposal in the Bill.

Clause 41

286. Delete Clause 41 because remittance of excise duty within 24 hours will pose implementation challenges like those highlighted under withholding tax.

Committee Observations

The Committee observed that the remittance of betting taxes within twenty-four hours had been tried and tested and was already working effectively. To this extent, the proposal was therefore rejected by the committee.

Clause 68

287. Delete Clause 68 because it would increase the cost of housing and infrastructure locally, particularly where the local production does not meet the demand. Layoffs would also arise where companies that are importing the products seek to lower costs of production.

Committee Observations

The Committee observed that the introduction of the export and investment promotion levy is aimed at boosting local manufacturing, promote exports, promote the value chain and creating more jobs in the country by providing aggregation centers at the counties. In addition, the Committee observed that there

was also a need to clean up subclause (4) as the word ‘to’ was misplaced in the sentence. Therefore, the Committee rejected the proposal by the stakeholder.

Clause 76

288. Delete Clause 76 because the requirement for employers to also contribute by matching the employees' contribution will increase employment cost and generally the cost of doing business in Kenya and may consequently lead to loss of job opportunities.

Committee Observations

The proposal was amended to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.22 ORARO & COMPANY ASSOCIATES

Clause 2

289. Amend Clause 2(b) by deleting ‘*in the case of an individual, a reference to a relative, as defined in section 26(5), of that person*’ under the definition of related persons since it includes all the relatives of a person to be liable for that person’s tax liabilities and obligations.

Committee Observation.

The Committee observed that the definition of the word ‘person’ is already defined under Tax Procedures Act, 2015. The Committee rejected the proposal.

Clause 20(b) and (c)

290. Delete Clause 20(b) and (c) since it requires the taxpayers to deduct and remit withholding tax to KRA and file a return within 24 hours of deduction. Considering the well-established legal requirement for withholding tax remittance, placing the burden of complying with 24- hour timeline on the taxpayers is unconstitutional and contravenes Article 201(b) and Article 10(2) (a) and (b) of the Constitution of Kenya 2010.

Committee Observation.

The Committee considered their proposal but noted that there was a need to harmonize withholding tax at 5%. In addition, the committee increased the timeframe from 24 hours to 5 working days. Deleting the clause will have a negative impact on Revenue Collection. The Committee, therefore, rejected the proposal.

Clause 30(a)

291. Delete Clause 30(a) as it requires taxpayers to possess evidence of financial records of third parties which are beyond their control thus increasing the compliance burden on them. Alternatively, if the clause is retained, they propose an appropriate provision to section 17(2) of the VAT Act to provide that the taxpayers who comply with the electronic tax invoice management System are not subject to section 17(2)(b) of the VAT Act.

Committee observation

The Committee considered their proposal, however, it observed that the proposal is there to disallow an individual from claiming input VAT twice. The Committee therefore rejected the proposal to delete the clause

Clause 33(b) (v) and 34(a)(ix)

292. Seeks to amend the clause. While agreeing with the clause on exempting exported services from VAT, the stakeholder proposed that it is not enough because the same increases the cost of services rendered by Kenyan suppliers relative to the same services offered by suppliers from foreign jurisdictions where VAT on exported services is zero-rated.

Committee observation.

The Committee noted the need to retain new paragraph 35 on the exportation of taxable services as exempt and deleted new paragraph 36 on the transfer of a business as a going concern exemption of this item would imply that businesses do not pay taxes by virtue of being exempted and hence leading revenue losses.

Clause 36

293. Delete Clause 36 because it contravenes taxpayers' rights to access justice guaranteed under Article 48 of the Constitution. The clause is termed as discriminative as it only puts the obligation of paying security on the taxpayers and not on KRA. Depositing the proposed 20% with KRA is a violation of the taxpayers' rights to property as it is effectively a collection of the tax that is in dispute.

Committee Observation.

The committed noted the proposal by the stakeholder and observed that the requirement to deposit 20% of the disputed amount before filing an appeal to the High Court will reduce work capital for business and deny justice for taxpayers where they are unable to raise the amount. Therefore, the Committee deleted the proposal in the Bill.

Clause 54.

294. Delete Clause 54(b) and retain Section 42A (4B) of the Tax Procedures Act. The proposal of remitting tax withheld by the withholding tax agent to KRA within 3 days is drastic. This will result in significant compliance challenges.

Committee Observation

The Committee noted the administrative hurdle of remitting within 3 days and therefore proposed to increase the 3 days to 5 working days.

Clause 56

295. Amend Clause 56 (b)(ii) to allow taxpayers to choose whether an overpaid tax should be refunded to them or applied to offset the taxpayers' outstanding debt or future liabilities.

Committee Observation.

The Committee considered their proposal however, it noted that the taxpayers are allowed to elect for refunds or request for offset for existing or future tax liabilities. The Committee therefore rejected their proposal.

Clause 59

296. Delete Clause 59 because it seeks to strike out the powers of the tribunal or court to retain control of its proceedings and allow taxpayers to appeal. In their submission, they also pointed out that the proposal will force taxpayers to engage legal counsel and tax consultants at the initial stage of drafting a notice of objection.

Committee Observation.

The proposal restricts the power of the court to admit new grounds of appeal depending on the circumstance and further takes away the inherent power of the courts to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The Committee, therefore, recommended the deletion of the clause in the Bill.

Clause 66

297. Delete Clause 66 because it interferes with the court's discretion to access the circumstances and allow a stay of proceeding where civil and criminal proceedings are concurrently taking place.

Committee Observations.

The Committee observed that the proposal will lead to abuse of the court process and lead to infringement of the rights of the taxpayers. The Committee, therefore, deleted the Clause in the Bill.

Clause 76

298. Delete Clause 76 because the proposal creates an additional unfair burden on employees and employers, who are already bearing the heaviest burden of taxation and funding social services and healthcare in Kenya through mandatory NSSF and NHIF payments.

Committee Observations

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.23 CEMTECH/SIMBA CEMENT COMPANY LIMITED / NATIONAL CEMENT COMPANY/ SAVANNAH CEMENT /DEVKI STEEL MILLS/DEVKI ENERGY COMPANY LTD,

Clause 68

299. Amend the Clause by imposing a rate of 25% and fixing long-term policy for 20 years because imposing the levy will protect the local industry, spur growth, create employment and ensure uninterrupted production and price stability. Further, the levy will reduce the cost of steel and cement and fulfill the government's agenda of affordable housing. They proposed imposing a rate of 25% and a fixed long-term policy for 20 years.

Committee Observations

The Committee observed that the introduction of the export and investment promotion levy is aimed at boosting local manufacturing, promote exports, promote the value chain and creating more jobs in the country by providing aggregation centers in the counties. The Committee further observed the need to clean up subclause (4) as the word 'to' was misplaced in the sentence. The Committee therefore rejected the proposal by the stakeholder.

3.24 AAK GROW

Clause 34 (a) (i) (ii) (iii)

300. Delete Clause 34(a)(i)(ii)(iii) because the removal of input and raw materials from the zero-rated status will lead to the final price of veterinary products increasing giving room for counterfeits and the use of illegal products by farmers. Also, the zero-rated inputs allow the manufacturing sector to grow and generate employment. Further, they informed the Committee to delete paragraph 16 in the second schedule of the VAT Act 2013, the proposal will lead to a High cost of production of pest control products locally and increased unemployment levels. AAK Grow also proposes the deletion of clause 34 (a) (iii) because the proposal will lead to Food insecurity/increased consumer prices: farmers of maize, potato, rice and local vegetables rely on pesticides for production. The cost of pesticides will increase which will eventually see an influx of counterfeit products from neighboring countries. This will reduce the country's competitiveness and foreign exchange earnings.

Committee Observations

The Committee noted the need to delete paragraphs (I), (ii) and (iii) and retain the items at zero rate because the manufacturers will not be able to claim credit for VAT.

3.25 MAISHA MABATI MILLS AND MAISHA PACKAGING COMPANY LIMITED

Clause 68

301. Amend Clause 68 by increasing the rate of export and investment levy from 10% to 15% because this will help Kenya develop and protect its industries by encouraging new investments, boosting confidence among investors and creating a friendly environment for industries to survive.

Committee Observations

The Committee noted on the introduction of the export and investment promotion levy is aimed at boosting local manufacturing, promote exports, promote the value chain and creating more jobs in the country by providing aggregation centers in the counties. The Committee observed the need to clean up subclause (4) as the word 'to' was misplaced in the sentence.

3.26 NORTH WOOD AGENCIES

Clause 72

302. Amend Clause by increasing the rate of export and investment levy from 10% to 25%.because no manufacturers can survive in Kenya against cheap imports. Kenya has become a dumping ground for international markets, while other countries are promoting their exports by providing 25% export rebates

Committee Observation

The Committee rejected the proposals in the Bill and made further amendments to Tariff nos. 2523.10.00, 7207.11.00, 7213.91.10 and 7213.91.90 by increasing the rate from 10% to 17.5% this is to support the development of local manufacturing. The Committee, however, retained the rates of the other items. The Committee appreciated the proposal by the stakeholder.

3.27 ASSOCIATION OF MANUFACTURING & SERVICES SECTOR ENGINEERS OF KENYA

Clause 68

303. Delete clause 68 because the approach of implementation of the levy may likely be a tourism fund where the officials of the Ministry of Investment, Trade & Industry will be permanently out of the country in the name of doing export promotions

Committee Observation

The Committee noted the introduction of the export and investment promotion levy which is aimed at boosting local manufacturing, promote exports, promote the value chain and creating more jobs in the country by providing aggregation centers in the counties.

The Committee observed the need to clean up subclause (4) as the word 'to' was misplaced in the sentence. The Committee therefore rejected their proposal.

3.28 WEST KENYA SUGAR COMPANY LIMITED

Clauses 33 and 34

304. Amend clauses 33 and 34 to retain transportation of sugar from farms to milling factories; fertilizers, input or raw materials locally purchased or imported by manufacturers of fertilizers; all other inputs whether locally purchased or imported supplied to manufacturers of agriculture pest control products as zero-rated and not exempt because they are necessary for the Agriculture sector which is the cornerstone of Kenya' economy.

Committee Observation

The Committee agreed that these products should be retained and as such agreed with the proposal of the stakeholder.

Clause 43(a) (iv)

305. Delete because imposing excise on sugar is likely to make the sugar industries locally uncompetitive noting that the sector is experiencing a myriad of challenges.

Committee Observation

The Committee noted the need to amend this paragraph to impose excise duty on imported sugar. The Committee rejected the proposal by the stakeholder.

Clause 54

306. Delete clause 54 because the administrative burden and risks or error from the requirement to remit to the commissioner deductions within three days are significant. Retain the current timelines.

Committee Observation

The Committee noted the need to extend the remission of withheld tax from 3 days to 5 working days to prevent administrative hurdles.

3.29 CLEAN COOKING ASSOCIATION OF KENYA

Clause 28(a):

307. Delete Clause 28(a) because the exemption of LPG from VAT will make it more affordable and will encourage its usage in many households. Further, help realize government environmental policy.

Committee Observation

The Committee noted that the existing VAT rates were not standard and thus needed to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 33(a) (xvii)

308. Delete HS Code 7321.11.00 and replace it with 7321.12.00. This is to spur the uptake of clean cooking solutions in the country, the proposal of having the right classification of HS Code providing for VAT exemption on Bioethanol vapor (BEV) Stoves will make them affordable.

Committee Observation

The Committee noted the importance of encouraging clean cooking.

3.31 KENYA AIRLINE PILOT ASSOCIATION (KALPA)

Clause 76

309. Amend Clause 76 by making a contribution to NHDF voluntary because members already have housing purchased through mortgages, vital information on NHDF is unavailable to warrant them commit their money to the project and members have no choice to determine the nature of houses and location they want.

Committee Observations

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.32 KUPPET

Clause 76

310. Delete Clause 76 because a similar proposal was there in 2019 and it was made voluntary. Article 40 of the constitution on the protection of properties shows the salaries teachers get are not a reward but earned and the government has no right to tax it. Further, the committee was informed that teachers contribute to NHIF, NSSF, PAYE, pensions superannuation scheme etc. and these statutory deductions are mandatory, making them highly taxed. Also, most teachers are predominantly in rural areas, some are retiring soon, while most have made plans and acquired housing. The proposal is discriminatory, especially to low-income earners and erroneous as tax is based on gross pay not basic pay. The proposal is discriminatory and should be made voluntary.

Committee Observations

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.33 OKOA UCHUMI (IBP, IPFK, NTA, TISA AND OKOA MOMBASA)

Clause 2

Amend the definition of winning to be only what the punter gets.

Committee Observation

The Committee amended the definition of “winnings” by deleting the word ‘without’ and inserting the words ‘in that particular transaction’. The Committee, therefore accepted the stakeholder’s proposal.

Clause 5

311. Amend Clause 5 (b) (fa) by deleting paragraph (fa) because the provision will be open to abuse as the reimbursement is to be used for performing official duties and notwithstanding the ownership or control of any assets purchased.

Committee Observation

The Committee rejected the proposal by the Stakeholder.

Clause 6

312. Amend Clause 6 by introducing a new tax rate of 10% on repatriated income for the year of income for a non-resident person and insert a new Section 7B (5) which includes permanent establishment, interest, royalties and management and professional fees that shall be deductible for non-residents operating through a branch and resident companies who carry on business in Kenya through a permanent establishment. This will harmonize the tax treatment of non-residents operating through a branch and resident companies as it would allow for deductibles and also provide a rate of tax for repatriated profits.

Committee Observations

The Committee accepted the proposal in the Bill with amendments to include a 15% tax rate. This will be in alignment with the rate of the withholding tax applicable on dividends paid by a resident for equity and fairness.

Clause 12

313. Amend Clause by deleting (b)(iii) by deleting the words “*a non-resident*” appearing in the opening words. This is because the existing exemption for micro and small enterprises in the ITA at present sufficiently cushions small businesses.

Committee observations

The Committee rejected the stakeholder’s proposal.

3.34 BLOCKCHAIN ASSOCIATION OF KENYA

Clause 10(4)

314. Delete Clause 10(4) on remission of tax within twenty-four hours because its administratively impossible to implement. The proposal to require the owners of platforms or facilitators to remit the

proceeds of collecting the DAT within 24 hours after making the deduction is unworkable and imposes grossly disproportionate administrative costs on platforms.

Committee Observation

The Committee proposed to amend the remission of withholding tax from 24 hours to 5 working days.

Clause 10 (1)

315. Delete clause 10(1) because the application and commencement of the Digital Asset Tax are intended to apply to the “income derived from the transfer or exchange of digital assets, because of the Central Bank of Kenya Directive warning banks and other financial institutions from transacting in cryptocurrencies.

Committee Observation

The proposal rejected

3.35 ACECLASS CONSULTANTS LIMITED

Clause 2(a)

316. Amend Clause by deleting the definition of “winnings” as provided for in the Bill; taxing the stake is akin to taxing the capital of a business; further, this is not only unconstitutional but also violates the core principle of income tax best practice.

Committee Observation

The Committee amended the definition of “winnings” by deleting the word ‘without’ and inserting the words ‘in that particular transaction’. The Committee therefore accepted the stakeholder’s proposal.

Clause 43(b)(iv)

317. Delete Clause 43(b)(iv) *“Seven-point five percent” appearing in paragraph 4A and substituting therefor the word words “twenty percent”* That a review of the Excise Duty on gaming was introduced in the Finance Act, 2021 and a further increase will lead to a decline in the gross gaming revenue and the betting tax.

Committee Observation

The Committee noted that the increase was too steep and as such agreed to reduce the rate from 20% to 12.5% and rejected the proposal by the Stakeholder.

Clause 43(b)(x)

318. Delete Clause 43(b)(x) because the introduction of excise duty on advertising will lead to the loss of jobs and lower corporation income and the collection for sports sponsorship.

Committee Observation

The Committee noted that this was meant to discourage the advertisement of such products because of their negative externalities in society.

3.36 TRADE UNION CONGRESS

Clause 5 (b)

319. Delete clause 5(b) because the money paid to officers on duty is meant to offset the actual expenses while in the field and cannot be taxed.

Committee Observations

The Committee rejected the stakeholder's proposal.

Clause 76

320. Delete Clause 76 which seeks to introduce a 3% levy towards National Housing Development Fund. The new levy will spell doom to the workers and this will be disastrous to households. The introduction of this new levy is irrational and reduces disposal income available to an employee. They propose making the fund optional until proper consultation and negotiation with workers' representatives are done.

Committee Observations

The Committee amended the proposal by reducing the rate from 3% to 1.5% and increasing the remittance period to the 20th of the following month after deduction to enable the construction and provision of affordable housing.

3.37 RSM EASTERN AFRICA CONSULTING LIMITED

Clause 5(a)(ii)

321. Amend by deleting (a)(ii) because it will occasion double taxation.

Committee Observation

The Committee noted that the proposal in the Bill will lead to double taxation and to remove the element of double taxation, the Committee agreed to delete the word 'disallowed' and replace it with the word 'allowed'.

Clause 5(8)

322. Propose an amendment to the new subclause 8(a) to read as follows: *Has an annual turnover of not more than one hundred million shillings at the time when the shares are offered?* This proposal is to make it clear on the threshold of the offered shares and time in lieu of cash.

Committee Observation

The Committee noted that the proposed amendment was not part of the Bill.

Clause 6(2)

323. Amend the subclause to read: *‘The repatriated income under subsection (1) shall be computed using the following formula- Where p- is the net profit for the year of income calculated in accordance with generally accepted accounting principles but does not include revaluation gains or losses on the assets.’* The current formula does not factor in aspects such as revaluation gains and losses on the assets, which will form part of the net profit of the year calculated in accordance with generally accepted accounting principles.

Committee Observation

The Committee noted that the proposed amendment was not part of the Bill.

Clause 7(3)

324. Amend the Clause by deleting new subclause 3 of the Tax Procedures Act. The provision attempts to restrict taxpayers from the refund or offset Withholding tax overpayments that result from revenue audits – referred to as audit adjustments.

Committee Observation

The Committee noted that this was meant to deter tax planning by multinational entities. The Resident entities are only withholding agents and do not suffer the taxes that seek to be refunded. The Committee rejected the proposal.

Clause 9

325. Amend Clause by deleting the words *“one million shillings but does not exceed or is expected to exceed fifty million shillings”* and substitute with *“five hundred thousand shillings but does not exceed or is expected to exceed twelve million shillings”*. The idea of turnover tax (TOT) is punitive to MSMEs. Align the TOT threshold with the provisions in VAT for simplicity and enhance profit margins for MSMEs.

Committee Observation

The Committee observed that there was a need to increase the Turnover Tax threshold to 1 million and reduce the maximum threshold to 15 million. The Committee rejected the stakeholder’s proposal.

Clause 10

326. Amend section 12F(5)(a)(i) – delete the word *“not tangible”* and substitute it with *“intangible”*. In the current definition, it’s not clear whether cryptocurrencies are excluded from the digital asset bracket.

Committee Observation

The Committee noted the clause seeks to introduce subjectivity in the interpretation of the sub-clause 5(a)(I). The Committee therefore rejected the proposal.

Clause 28

327. Amend by deleting subclause (a) because the move to tax fuel at 16% VAT has an adverse impact on disposable incomes, increasing the cost of living and impacting the growth of businesses.

Committee Observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 30:

328. Amend by deleting 30(b)- the proposed insertion in Section 17 Subsections 8 and 9. The insurance compensation by insurers is out of scope for VAT purposes thus compensation is never included in VAT will reduce the value of compensation received by individuals – affecting the principle of indemnity.

Committee Observation

The Committee noted that this would disallow an individual from claiming input VAT twice.

Clause 33(a)

329. Amend (iii) by removing tariff number 0402.29.10 from the deletions. The new amendment should read; The first schedule to the Value Added Tax Act, 2013 is amended – In section A of Part I- (iii) by deleting the tariff numbers; 3002.19.00 and 3003.90.90” and their corresponding tariff description, appearing immediately after paragraph 39; and deleting tariff number 0402.29.10 and replacing with 0402.29.00.

The EAC Common external tariff does not have a tariff number 0402.29.10. instead replace with code with 0402.29.00 so as still exempt milk, specially prepared for infants from VAT

Committee Observation

The Committee agreed that there was a need to delete and insert a new Paragraph to be introduced to read as follows; ‘milk, specially prepared for infants of Tariff heading 1901’.

Clause 36

330. Delete Clause 36 because the provision undermines the taxpayer's Constitutional right to appeal to the High Court. The Commissioner has the discretion to limit the acceptable securities and occasion delays in the refund of VAT

Committee Observation

The Committee observed that the requirement to deposit 20 % of the disputed tax before an appeal to the High Court would limit the right to access justice, especially for taxpayers who cannot make the deposit. The Committee accepted the proposal by the stakeholder to limit the proposal.

Clause 41

331. Delete 36A subsection (3) requiring that the Commissioner may by notice in the Gazette, require taxpayers in any sector to remit excise duty collected on certain excisable services within twenty-four hours from the closure of transactions of the day. This time is short and will result in administrative challenges in the approval of tax remittances and the reconciliation process.

Committee Observation

The Committee rejected the proposal from the stakeholder noting that there was a system in place that allowed remission within 7 hours.

Clause 43

332. Amend (b) in part II by deleting (viii) because this will affect digital lenders who are already regulated under CBK (Digital Credit Providers) Regulations, 2022. The DCP will become a financial institution upon the implementation of the regulations. Should be subject to the same rate of excise duty of 15% as other financial institutions to avoid discrimination.

Committee Observation

The Committee observed that it was important to treat financial institutions and digital lenders similarly by imposing a similar rate of 15%.

Clause 47

333. Amend Section 23A subsection 4 to read: (4) The electronic tax invoice referred to in subsection (3) may exclude emoluments, imports, investment allowances, interest, and similar payments, invoices from persons not required to register for VAT and accrued of expenses to the extent that they can be supported with a tax invoice in the subsequent period. The current provision does not take into account invoices received from persons who have not achieved the VAT registration threshold and therefore do not have electronic tax invoices. Exclusion of these may limit taxpayers' right to claim expenses against their taxable income.

Committee Observation

The Committee noted that the use of electronic tax invoices is meant to enhance compliance and seal revenue leakage. Further, this is a system app available for download for free by all taxpayers and will greatly reduce taxpayer compliance costs unlike where taxpayers were previously required to buy expensive gadgets. The Committee rejected the proposal by the stakeholder.

Clause 54

334. Amend by deleting subclause (b) as proposed and retain (4B) the current provision in the Act. The proposed payment deadline will create an administrative burden for taxpayers from a compliance perspective by requiring them to remit the taxes within 3 days is short. Further, the deadline provided is inconsistent with other tax obligation timelines.

Committee Observation

The Committee observed that the 3-day remission period would cause administrative challenges and therefore recommended for extension of the period to 5 days.

Clause 59

335. Delete the words “*unless the Tribunal or court allows the person to add new grounds*” and retain the provision in Section 56 of the Act. The new proviso limits the taxpayer's right to dispute issues arising from the objection decision which were not included in the assessment. This will affect fair administrative action and fair hearings.

Committee Observation

The Committee noted that the Clause restricts the power of the court to admit new grounds of appeal depending on the circumstance and further takes away the inherent power of the courts to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The Committee agreed with the stakeholder's proposal.

Clause 63

336. Delete the amendments to Section 89 of the Tax Procedures Act. This will effectively remove the application of waivers and penalties. Resulting in a negative effect on taxpayers on the determination of waivers on penalties and interest granted.

Committee Observation

The Committee noted that there was the need to remove the discretion in consideration for abandonment or remission of tax, waivers or penalties to provide equity and fairness in the treatment of taxpayers.

Clause 76

337. Delete the amendments to section 31B of the Employment Act. The rules do not provide clarity on how the money collected for housing will be invested. Any interest that will accrue from such investment will be handled and the contributor will be issued with a statement. Further, the proposed adoption of the new subsection- “provided that an employer shall not remit both the employee and employer contributions to the National Housing Development Fund for an employee upon expiry of seven years from the date of the start of contributing by the employee, or after the attainment of retirement age. This will ensure that where an employee has accrued the benefits of the housing levy under Section 31B subsection 2, they will no longer be required to contribute to the Housing Levy.

Committee Observation

The Committee amended the proposal by reducing the rate from 3% to 1.5% and increasing the remittance period to the 20th of the following month after deduction to enable the construction and provision of affordable housing.

3.38 MJENGO

Clause 43 (a)(iv):

338. Amend Clause by deleting (a)(iv) “*pasta of tariff number 1902 whether cooked or not cooked or stuffed (with meat or otherwise substances) or otherwise prepared such as Spaghetti, Macaroni, noodles, lasagna, ravioli, cannelloni, couscous whether or not prepared*” appearing in paragraph 1;

Committee Observations

The Committee observed that the clause would impose excise on both imported and local pasts. The Committee recommended on the need to protect local industry and therefore deleted the word ‘imported’.

3.39 EARNEST AND MARTIN ASSOCIATES

Clause 2

339. Amend Section 2 by reviewing and harmonizing the definition of *digital content monetization*, with the definition of *royalties and professional and management fees one on advertising*. The definition of digital content monetization is at odds with the definition of "royalty" which means a payment made as a consideration for the use of or the right to use. In addition, there is a need also to ensure that the rate is at 5% to avoid confusion for the other three definitions of royalty have the rate, yet the definition of digital content monetization is at the rate of 15%.

Note: Definition of the ‘Royalty’

- i) the copyright of a literary, artistic or scientific work; or
- ii) a cinematograph film, including film or tape for radio or television broadcasting; or
- iii) a patent, trademark, design or model, plan, formula or process; or management fees include consultancy and agency Sales promotion, marketing and advertising

Committee Observations

The Committee that the withholding tax for digital content monetization was too steep and proposed a reduction of the rate to 3%.

Clause 4

Amend the Clause by inserting the word ‘*related*’ after the words ‘*non-resident*’

Committee Observation

The Committee rejected the proposal as it was not supported.

Clause 5b

340. Amend Section (4) by deleting the words “*to a public officer*” and replace with “*to an employee*”. This will ensure there both employees in the public and private sectors are affected. This provision will promote paying for an asset without following the public procurement and disposal act.

Committee observation

The Committee rejected the proposal.

Clause 6

341. Amend clause 6 of the Bill under Repatriated income to include tax rate under section 34(2) and third schedule paragraph 3 and provision to deduct tax under section 35(1).

Committee observations

The proposal by the stakeholder is not supported.

Clause 9

342. Delete the proposal “*one million shillings but does not exceed or is not expected to exceed fifty million shillings*” and substitute therefor “*five hundred thousand shillings but does not exceed or is not expected to exceed fifteen million shillings*”. Harmonization of the threshold of turnover tax with that of rental income, yet rental income is passive income and business income is active income with a lot of cost and management time is not good. Have this proposal withdrawn

Committee observations

The Committee rejected the proposal from the stakeholder. The Committee observed the need to reduce the maximum threshold to 25 million.

Clause 10

343. Amend Clause 10 Section 12F11 (2) to add the following proviso ‘*Provided that this section shall not apply where a person who would otherwise pay tax under this section, by notice in writing addressed to the Commissioner, elects not to be subject to digital asset tax, in which case the other provisions of this Act shall apply to such a person*’. The Digital asset tax should be imposed on the gain and not on the gross amount, since Digital assets are investment instruments and are not services and to impose a tax on the gross fair market value consideration received or receivable is not fair because the investment may have had a cost of acquisition. In addition, the investment value is liable to fluctuation in price and as such the investor may have incurred a loss.

Committee Observations

The proposal is not supported.

Clause 12

344. Delete the words “a *non-resident*” and replace them with “a *related non-resident person*” under (b)(ii) to be consistent with proviso (iv) since it should be the aggregate of all loans from a non-resident person and not a single non-resident person. Also, the interest restriction should be for related party loans not from 3rd party non-residents. E.g., if a person borrowed from AFRIEXIM Bank. Such interest may fall victim to this provision.

345. Amend (c) by deleting the words “*but shall not include local loans*” and replace with “*but shall not include any of the foregoing if provided, issued or lent by a resident person*” To ensure that the loans in consideration are in respect of advances from non-resident persons.

Committee Observations

The proposal is not supported.

Clause 20

346. Amend Clause 20(c) deleting the 24-hour payment requirement. Payment of taxes every 24 hours is a huge administrative burden on taxpayers. This means signatories must always go to the office to approve payment

Committee Observations

The Committee observed that the proposal in the Bill to have withholding tax agents remit the withheld tax within 24 hours is cumbersome and costly to businesses given that the time period is being reduced from the 20th of the next month to just 24 hours. Therefore, the Committee proposed to increase the period to 5 working days.

Clause 26

347. Amend Eighth Schedule Delete the proposed paragraph (4A) and replace it as follows: (4A) ‘*Where property is transferred in a transaction under paragraph 6(2) of this schedule, and the property is subsequently transferred in a taxable transaction within less than five years, then the adjusted cost in the subsequent transfer shall be based on the original adjusted cost as determined in the transfer that happened prior transfer that happened, in addition, any other costs incurred by that person in accordance with this paragraph.*’ Paragraph 8(4A) should only apply to transfers not deemed to be a transfer per paragraph 6(2) of the 8th schedule instead of saying “a transaction that is not subject to capital gains tax,” The time of transfer under the 8th schedule may vary from the date of payment or date of registration.

348. Delete the proposed (c)11A and replace it with ‘*A person subject to tax payable in respect of property transferred under this Part shall submit a return and pay the tax due to the Commissioner on or before the twentieth day of the month following the realization of gain or loss in accordance with paragraph 4(3) of this part*’

Committee Observations

The proposal is not supported.

Clause 36

349. Delete clause 36 because the proposal denies access to justice and is so wrong, retrogressive, and unconstitutional.

Committee observations

The Committee noted that the requirement to deposit 20 % of the disputed tax before an appeal to the High Court would limit the right to access justice. The Committee accepted the stakeholder's proposal.

Clause 41

350. Deleting section 36A from the proposal creates a huge administrative burden on taxpayers.

Committee Observations

The Committee rejected the proposal by the stakeholder as there was a system already in place.

Clause 43

351. Delete (b) Part II (viii) First Schedule paragraph 6 for the paragraph is a superfluous provision because all digital lenders are regulated by CBK.

Committee Observation

The proposal is not supported.

Clause 49

352. Delete 32A (6) (b) this will be unconstitutional despite the liability for the tax due being contested, the purpose of the dispute is to delay or frustrate the collection of the tax due

Committee Observation

The proposal is not supported.

Clause 51

353. Delete the proposed section 37E (4) and replace it with ‘*despite subsection (2), where a person has paid part of the principal tax due as of the 31st December 2022, and had been granted an amnesty on the unpaid principal tax, and interest, penalties and fines thereon,*

- 1) *any amount paid between 1 January 2023 and 30th June 2024 shall not attract any further interest, penalty, or fines during the amnesty period*
- 2) *Any amount that remains unpaid on the 30th of June, 2024, shall attract interest and penalties for which no amnesty shall be granted under this section*

This is to ensure that no interest, penalty or fines are accumulated on the amount paid during the amnesty period and the commencement of the amnesty provision should be deferred.

Committee Observations

The proposal is not part of the Bill.

3.40 THE TECHNICAL UNIVERSITY OF KENYA/ COLLINS MIRUKA, PhD

Clause 76

354. Delete clause 76 because the housing levy is not designed in a way that takes into consideration the varying income levels of Kenyans, it may be a burden to low-income earners; secondly, there is currently no clear and transparent mechanism through which the funds will be managed;

Committee Observation

The Committee amended the proposal by reducing the rate from 3% to 1.5% and increasing the remittance period to the 20th of the following month after deduction to enable the construction and provision of affordable housing.

3.41 AMERICA CHAMBER OF COMMERCE

Clause 2

355. Amend Clause 2(a) by deleting the words “*without deducting the amount staked or wagered*” in the definition of “winnings”. The incorporation of the amount wagered or staked into the definition of winnings would contradict the definition of winnings established by the Tax Appeals Tribunal in Tax Appeal No. 304 of 2019 and upheld by the High Court in Income Tax Appeal No. E003 of 2019. These rulings clarified that winnings, as outlined in the Income Tax Act, pertain to payouts made by the licensee and do not encompass the amounts staked by the individual betting. Furthermore, the Finance Bill of 2019 introduced a 7.5% excise duty on the amount wagered or staked, which is proposed to be increased to 20% in the Finance Bill of 2023.

Committee Observation

The Committee amended the definition by deleting the word ‘without’ and including the words ‘in that particular transaction’ after the word ‘wagered’. The Committee noted the amendment was in alignment

with the decision of the Tax Appeals Tribunal in *Commissioner of Domestic Taxes v Pevans East Africa Limited & 6 others* (Tax Appeal E003 of 2019 [2022] KEHC 10392 (KLR)).

Amend to remove tax on digital content monetization. The economy in Kenya is small but has the potential to offer Kenyans from all walks of life new and unique economic opportunities. A burdensome tax regime will stunt its growth in Kenya, placing Kenya creators at a disadvantage and likely for very little tax revenue. Given the digitalization of business across many sectors, this is expected to increase the cost of doing business on digital content that is monetized with an added obligation of complying with withholding tax provisions.

Committee observation

The Committee noted that it was a constitutional duty for all eligible taxpayers to pay tax.

Clause 5

Amend Clause 5(a) paragraph (ii)(fa) to read '*club entrance and subscription fees which are disallowed under section 16(2)(v) of the Income Tax Act*'

Committee Observations

The Committee observed the need to delete the word 'disallowed' and replace it with the word 'allowed'.

Clause 28

356. Amend Clause 28(a) of the VAT Act by maintaining the existing 8% VAT rate on petroleum products. Consumers would benefit and the harm to the economy would be lessened if the present 8% VAT rate on petroleum items were maintained. It would be compatible with initiatives to help and stimulate consumers and companies in the current challenging economic conditions.

Committee Observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 30

357. Amend Clause 30 by deleting paragraph (a). Previously, if either condition was satisfied, input tax may be deducted. According to the proposed changes, taxpayers will need to provide proof that both conditions have been satisfied in order to be eligible for an input VAT input deduction. Taxpayers will find it more challenging to deduct input VAT under this approach. Before claiming an input VAT deduction, the registered supplier's declaration of the sales invoice in a return and the necessary paperwork required by the VAT Act must both be retained. This procedure is excessively onerous and may lead to reasonable claims being denied.

Committee Observations

The Committee noted that the proposal seeks to make it mandatory that a person claiming input VAT should hold requisite documentation and the supplier has declared the supply in the return. It seeks to enhance compliance.

Clause 31

358. Amend Clause 31 by deleting the proviso stating “*Provided that a person supplying imported digital services over the internet, an electronic network or through a digital marketplace shall register whether or not the taxable supplies meet the turnover threshold of five million shillings.*” By doing this, suppliers of digital services would effectively be protected from the onerous compliance requirements of having to register and account for VAT on their transactions even if their transactions are of modest value. Additionally, this would guarantee that these providers of digital services receive the same treatment as Kenyan suppliers that produce supplies below the threshold for VAT registration and are consequently free from the necessity of registering for VAT.

Committee Observations

The Committee noted that this was a clean-up and as such rejected the proposal.

Clauses 33 and 34

359. Amend First Schedule, Part I, Section A by deleting paragraphs 150, 151 and 152 which suggest changing the status of several pharmaceutical and agricultural inputs from zero-rated to exempt. Examples of such inputs include fertilizers, the movement of sugarcane from farms to milling facilities, and inputs or raw materials used in the manufacture of pharmaceuticals. The relevant providers of such inputs will not be allowed to deduct the input tax they paid on their Vatable purchases because of the exemption. As a result, the cost of the unclaimed input VAT would be passed on to the customers, causing product prices to increase. Food security and the cost of life would suffer because of the rising cost of agricultural and pharmaceutical inputs.

Committee Observations

The Committee agreed to retain the items under the zero-rate schedule. These items affect agriculture and pharmaceuticals which are essential items for Kenyans and a reclassification to exempt would lead to an increase in the cost of these products.

Clause 36

360. Delete Clause 36 because this requirement would be against Kenyan Constitutional Article 48, which states that the State must ensure that everyone has access to justice and that any fees charged must be reasonable and not obstruct access to justice. Furthermore, some tax issues cost billions of dollars, and the proposed amendment will prevent legitimate people from appealing to the High Court because of the necessity for a 20% deposit.

Committee Observation

The Committee noted that this clause will deny the right to access justice to taxpayers who will be unable to deposit the 20% security and further the requirement will distort business capital. The Committee accepted the proposal by the stakeholder.

Clause 41

361. Delete Clause 41 the provision to make payment of excise duty within twenty-four hours. KRA recently introduced a real-time system that enabled bookmakers to promptly remit betting taxes. This involved onboarding bookmakers and integrating their systems into the KRA system, which facilitated seamless implementation. However, the current proposal does not mention a similar integration of systems. The requirement to remit excise duty within 24 hours would present implementation difficulties akin to those already identified with withholding tax.

Committee Observation

The Committee rejected the proposal as there is a system in place that allows remission within 7 days.

Clause 43

362. Amend the First Schedule, Part I to exclude imported cellular from the list of additional items within the ambit of Excise tax as they are not locally made, manufactured or assembled in Kenya. Expanding the range of products that are subject to excise duty will result in higher import expenses, which will raise the cost of doing business. This will have a severe effect on firms, who are currently fighting to survive by making sure their costs are maintained as low as possible.

Committee Observation

The Committee rejected the proposal by the stakeholder as it noted that there was a need to support the local industry.

363. Amend the First Schedule, Part I paragraph (ii) by Substitute "*Imported White Chocolate of heading 1704; Chocolate and other food preparations containing cocoa of tariff nos. 1806.31.00, 1806.32.00, and 1806.90.00*" for the tariff description "*Imported White Chocolate including chocolate in blocks, slabs, or bars of tariff nos. 1806.31.00, 1806.32.00, and 1806.90.00*". The National Treatment principle, which states

in Article III that "imported products shall not be subject to internal taxes or other internal charges of any kind in excess of those applied, directly or indirectly, to similar domestic products," must be followed by Kenya as a member of GATT/WTO.

Committee Observation

The Committee rejected the proposal and to protect local industry included the word 'imported' before the term 'chocolate'.

364. Amend the First Schedule, Part I paragraph (iii) by retaining the word "*imported*" as its deletion would subject both locally manufactured and imported sugar confectionary to excise tax. This will thus eliminate the competitiveness of the local confectionary industry against imported confectionery as the retail prices of locally produced confectionery will increase due to the new excise duty cost that will be passed to final consumers.

Committee Observation

The Committee accepted the proposal by the stakeholder to maintain the word 'imported'.

365. Amend the First Schedule, Part II, Paragraph 6 to read "*Excise duty on any amount charged in respect of lending by **all forms of digital lenders (whether a financial institution or otherwise)** at a rate of twenty percent.*" The approach chosen on core earnings of financial institutions, such as the interest for banks, premiums for insurers, and premium-based commissions for insurance brokers, where these incomes are exempt from excise duty, conflicts with the imposition of excise duty on interest paid by digital lenders.

Committee Observation

The Committee noted the need to reduce the rate from 20% to 12.5% as such rejected the proposal by the stakeholder.

Clause 54 (b)

366. Amend Section 42A by deleting subsection (4B) and retaining the deadline to remit withholding VAT deducted to the 20th day of the following month as per the current provision. When the administrative workload increases, businesses are compelled to employ more resources, leading to higher operational expenses and placing unwarranted pressure on them. Small and Medium Enterprises (SMEs), which constitute the majority of businesses in Kenya, would also be significantly affected by this additional burden.

Committee Observation

The Committee observed that increasing the penalty to double the amount of the tax shortfall would be excessive and disproportionate to the offense, especially given that there are already other penalties and sanctions that can be imposed on taxpayers who engage in fraudulent or negligent conduct.

Clause 61

367. Delete Clause 61 because taxpayers, especially small and medium-sized businesses that would struggle to pay such penalties, would be significantly impacted by the plan to increase the tax shortfall penalty from 75% of the tax shortfall to double the amount of the tax shortfall. Nonetheless, the current penalty of 75% already serves as a powerful deterrence against non-compliance and offers an acceptable degree of punishment for individuals who intentionally make false or misleading claims or omit material information from their tax filings.

Committee Observation

The Committee observed that increasing the penalty to double the amount of the tax shortfall would be excessive and disproportionate to the offense, especially given that there are already other penalties and sanctions that can be imposed on taxpayers who engage in fraudulent or negligent conduct.

Clause 68

368. Delete Clause 68 because the imposition of an additional 10% export and investment promotion fee on top of the present import tariff of 10% on iron and steel will raise the cost of doing business.

Committee Observation

The Committee noted the introduction of the export and investment promotion levy which is aimed at boosting local manufacturing, promote exports, promote the value chain and create more jobs in the country by providing aggregation centers in the counties. The Committee observed the need to clean up subclause (4) as the word 'to' was misplaced in the sentence.

Clause 72

369. Amend by deleting Third Schedule because it will lead to an increase in the expenses of housing and infrastructure projects within the country, especially in cases where local production is insufficient to meet the demand. It is important to acknowledge that Kenya has faced a deficit in the production of certain products like cement clinkers and iron ore over the past three years.

Committee Observation

The Committee rejected the proposals in the Bill and made further amendments to Tariff nos. 2523.10.00, 7207.11.00, 7213.91.10 and 7213.91.90 by increasing the rate from 10% to 17.5% this is to support the development of local manufacturing. The Committee, however, retained the rates of the other items.

Clause 76

370. Delete Clause 76 because the adoption of the proposal will result in an additional reduction in the net income of employees who are already subject to significant taxation through the PAYE system and indirect taxes like VAT and excise duty. This will further diminish employees' ability to spend,

considering the prevailing high inflation and the overall high cost of living. Moreover, the mandate for employers to match employees' contributions will escalate employment costs and, more broadly, the expenses associated with conducting business in Kenya. Consequently, this may lead to a decrease in job opportunities, as businesses face higher financial burdens.

Committee Observation

The Committee amended the proposal by reducing the rate from 3% to 1.5% and increasing the remittance period to the 20th of the following month after deduction to enable the construction and provision of affordable housing. The committee recommended that the clause shall become effective following the operation of the regulations.

3.42 BINANCE

Clause 10 (1)

371. Delete clause 10(1) because the application and commencement of the Digital Asset Tax are intended to apply to the “income derived from the transfer or exchange of digital assets, because of the Central Bank of Kenya Directive warning banks and other financial institutions from transacting in cryptocurrencies. Binance submitted that even if the proposed clause in the Bill were to pass as is it would be impossible to implement it. Additionally, Binance indicated that as proposed the DAT will lead to multiple instances of double taxation and will unfairly penalize Kenyan holders of digital assets as compared to other asset classes. This proposal has the potential of stifling an entire industry.

Committee Observation

The Committee rejected the stakeholder’s proposal.

Clause 10(3) and Clause 24

372. Delete Clause 10 (12F) (3) and 24(b) (x) because it is potentially unconstitutional following the Court of Appeal and the Supreme Court’s decision on Minimum tax where the court indicated the imposition of the minimum tax on gross turnover rather than gains or profit results in unfair taxation and is therefore contrary to Section 201(b) of the Constitution, as it imposes a higher tax burden on loss-making taxpayers. Taxation of digital assets at transfer value will effectively disproportionately penalize trading or disposal activity, irrespective of any underlying value change, because it discourages consumers from realizing assets upon disposal (even at a loss).

Committee Observation

The Committee rejected the proposal by the stakeholder. The Committee observed that the rationale for gross turnover at 3% is to make it easy for trading platforms to comply.

Clause 10(4)

373. Delete Clause 10(4) on remission of tax within twenty-four hours because its administratively impossible to implement. The proposal to require the owners of platforms or facilitators to remit the proceeds of collecting the DAT within 24 hours after making the deduction is unworkable and imposes grossly disproportionate administrative costs on platforms.
374. Digital Asset Traders declare income from their trades under either business income or capital gains like other businesses. The government of Kenya to lift burns on cryptocurrency trades to enable the KRA to have access to such information from financial services providers.

Committee Observation

The Committee noted the need to amend the remission of withholding tax from 24 hours to 5 working Days noting the administrative challenges.

3.43 RUARAKA SOCIAL ACCOUNTABILITY NETWORK

Clause 28

375. Delete the clause because increasing VAT on fuel from 8% to 16% will have a significant impact on the cost of living and might create more desperation and poverty among the already vulnerable.

Committee Observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government.

Clause 76

376. Delete clause 76 because housing is a private agenda in which each person has his/her own development goals and therefore the deductions should not be mandatory; the implementation of the housing program should be strictly under PPPs and not government programs disguised as PPPs.

Committee Observation

The Committee amended the proposal by reducing the rate from 3% to 1.5% and increasing the remittance period to the 20th of the following month after deduction to enable the construction and provision of affordable housing. The Committee recommended that the clause shall become effective following the operation of the regulations.

3.44 AFIPEK

Clause 43(a)(vi)

377. Amend the Clause by deleting paragraph (a)(vi) because there is a huge demand for fish as the current deficit is at 350,000 MT. MSMEs depend on imported fish to meet demand. The proposal will increase working Capital by 50%, driving importers out of business. AFIPEK Proposes to have a clear framework/strategy to increase production, excise duty-free imports for human consumption for 3

years to meet demand and increase per capita fish consumption as local farmers work in increasing production. Introduce a 5% excise duty after the 3 years. Zero-rating for import duties levies on fish feed and aquaculture production supplies.

Committee Observations

The Committee noted that though it was important to protect local industry, they noted that there was no sufficient local production capacity as such the Committee agreed to reduce the rate to 10% for imported fish.

3.45 CLIFFE DEKKER HOFMEYR (CDH)

Clause 1

Amend the Clause to include section 72 because the provisions are dealing with the same thing.

Committee observation

The Committee observed that no preparation require to be done before charging the Levy can be affected. The proposal was therefore rejected by the Committee.

Clause 2 - Digital content monetization

378. Amend the Clause by reducing the rate on digital monetization from 15% to 5% because the rate of 15% WHT is relatively higher than the applicable rate for residents' management/professional fees. Thus, subjecting digital content creators to a higher rate would be unreasonable, unfair and unnecessary.

Committee observation

The Committee observed that the clause was specific to the definition only. The proposal was therefore not supported

Amend the Clause by harmonizing the definition of 'persons', and remove the extension of section 26(5)

Committee Observation

The Committee adopted the proposal with amendments. The Committee proposed to delete the definition of the word 'person' contained in the Bill since it is already defined under Tax Procedures Act, 2015.

Clause 6 – repatriated income

379. Delete Clause 6 because it does not prescribe a rate as with all other taxes and even if a rate is prescribed at this point, the would-be prescribed rate would not have gone through public participation therefore it is only fit that the section be deleted.

Committee observation

The Committee rejects the proposal to delete Clause 6. However, the committee appreciates the proposal to prescribe a rate at which the repatriated income shall be taxed. The Committee, therefore, recommends a rate of 15% on repatriated income in alignment with the rate of the withholding tax applicable on dividends paid by a resident company to a non-resident shareholder

Clause 9 – increase in turnover tax band

380. Delete Clause 9 since considering all taxes payable by businesses in totality, it will burden SMEs and the informal sector, contradicting the government's agenda of promoting business.

Committee Observation

The Committee rejects the proposal to delete Clause 9. However, the Committee proposes an amendment to the TOT threshold to “one million shillings but does not exceed twenty-five million shillings” in line with the government's agenda of promoting business.

Clause 24 – new PAYE band

381. Amend the Clause by deleting paragraph (b) because it will reduce the employees' net pay in the wake of the rising cost of living. It also disregards other increments which have most recently been subjected to the employees (NSSF, NHIF) reducing their net pay.

Committee Observation

The Committee rejects the proposal to delete paragraph (b) but rather introduces a band of 500,000-800,000 at 32.5% per month and a band of above 800,000 at 35% per month

Clause 28 – increase VAT on petroleum products

382. Delete Clause 28 because an increase in taxes would increase inflation due to the consequential high cost of products by manufacturers and transporters. In turn, this would significantly negatively impact the ordinary citizen and the entire population at large.

Committee Observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 34 (a) (vi) - VAT on exported services

383. Amend Clause 34 by deleting (a)(vi) to make exported services zero-rated and not exempt, to align with the National Tax Policy and also align with the practice in other countries. Further, this should

apply from 1 July 2022 since the VAT Act was not clear on what business processing outsourcing meant.

Committee Observation

The Committee agrees with the proposal to delete Clause 34 (a) (vi). This will enable companies to claim credit for VAT.

Clause 34 (a) (ii)

384. Amend the Clause by retaining Paragraphs 16, 19, 21, 24 and 25 in the Second Schedule of Value Added Tax Act, 2013. The proposed amendment shifts inputs and raw materials for manufacturing agricultural pest control products and for fertilizers from zero-rating to exemption is counterproductive in relation to the government's commitment to enhancing the agricultural sector and developing the manufacturing industry in the country.

Committee Observation

The Committee adopts the proposal by the CDH and recommends that Paragraphs 16, 19, 21, 24 and 25 in the Second Schedule of Value Added Tax Act, 2013 be retained.

Clause 33(a) (xix)

385. Amend Clause by retaining paragraph 107 as in the Value Added Tax Act, 2013 since plastic recycling companies collect waste plastics and transform them into useful products, thereby greatly contributing to reducing plastic waste in the environment. Further, recycling plastic promotes sustainability by reducing energy consumption, reducing greenhouse gas emissions, and conservation of natural resources.

Committee Observation

The Committee observed that a company that invested in a plastics recycling plant two years ago on the strength of this exemption will now find that it no longer has the benefit, despite having invested. The Committee adopts the proposal by CDH and therefore recommends retaining paragraph 107 as in the Value Added Tax Act, 2013.

Clause 41

386. Delete Clause 41 since giving the Cabinet Secretary the discretion to require taxpayers in any sector to remit excise duty within twenty-four hours, would, if exercised, subject taxpayers to undue disadvantage. Such a requirement can only be practical if there is sufficient support by facilitative technologies on KRA's end and also on the end of the targeted taxpayers.

Committee Observation

The Committee observed that the tax alluded to is a government revenue already charged and should be remitted as soon as it is collected. The Committee rejected the proposal.

Clause 43(a)(vi)

387. Amend the Clause by deleting (a) paragraph (iv) because sugar is a basic commodity in all households and a price increase would have negative financial implications on almost all Kenyans.

Committee observation

The Committee rejected the proposal to delete Clause 43(a)(vi) in regard to sugar. However, the Committee amends the Clause by introducing the word 'imported' immediately before the word sugar. This will protect local industry.

Clause 36

388. Delete Clause 36 because it will have the undesirable effect of increasing the costs of appeals. This will consequently hinder access to justice which is a major constitutional tenet in Article 48.

Committee observation

The Committee adopts the proposal to delete Clause 36. The Committee observed that the high court has the discretion to determine the security once a matter is before the court.

Clause 57

389. Amend Clause 57 paragraph (a) by increasing the proposed timeline to 30 days for the taxpayer to submit the information specified in the notice because the proposed timeline of seven (7) days is not sufficient to allow a taxpayer to provide the information specified in the notice. The limited timeline may infringe on a taxpayer's constitutional right to a fair hearing under Article 50.

Committee Observation

The Committee observed that the proposal to increase the period to 30 days will make the provision redundant since the Commissioner only has 14 days to make the decision. The information must therefore be provided within the period that the Commissioner is required to make the decision. The proposal by CDH is therefore rejected.

Clause 59

390. Delete Clause 59 because the High Court has discretionary powers of review under the Civil Procedure Rules to allow a person to add new grounds. Further, this amendment infringes on the right to access to justice where there is new and compelling evidence.

Committee observation

The Committee observes that the proposal restricts the power of the court to admit new grounds of appeal depending on the circumstance and further takes away the inherent power of the courts to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The proposal is therefore adopted.

Clause 66

391. Amend the Clause by deleting the words "*that fact shall not be a ground for any stay, prohibition or delay of either the criminal or civil case*" appearing after the words "*pending civil case*" and substituting therefor with the words "*the court shall consider any application for stay or prohibition and may grant such relief as it deems appropriate.*" This proposal as is in the Bill will easily lead to the abuse of court processes and subsequently result in infringement of the rights of taxpayers by interfering with their ability to attend to multiple proceedings at the same time.

Committee Observation

The Committee appreciates the amendment proposed by CDH. However, the Committee observes that retaining Clause 66 will lead to abuse of the court process and infringement of the rights of the taxpayers. The Committee, therefore, recommends the deletion of Clause 66 and Section 5 (4) of the Miscellaneous Fees and Levies Act, 2016.

Clause 76

392. Amend the Clause by deleting the word "*shall*" appearing before the words "*pay to the National Housing Development Fund*" and substituting therefor with the word "*may*". This amendment will contribute to being voluntarily which is fair, especially for small-scale earners or employees who already have a house or are already paying for mortgages. Further, the 3% contributions from the employer and the employee were not budgeted for at the contracting point thus an unpredicted burden. This may result in laying off staff to maintain the same costs for staff.

Committee Observation

The Committee appreciates the amendment proposed by CDH. However, the Committee amends the proposal by reducing the rate from 3% to 1.5% and increasing the remittance period to the 20th of the following month after deduction to enable the construction and provision of affordable housing. Further, the Committee recommends that the clause shall become effective following the operation of the regulations.

3.46 INSTITUTE OF SURVEYORS OF KENYA

Clause 20 (b) 3AB

393. Amend the Clause by deleting (b) paragraph (3AB) because it will be impractical to remit rental income tax in 24 hours given the logistics required.

Committee Observation

The Committee rejects the deletion of paragraph (3AB). However, the Committee observed that the proposal in the Bill to have withholding tax agents remit the withheld tax within 24 hours is cumbersome and costly to businesses. Therefore, the Committee proposed to increase the period to 5 working days.

Clause 76

394. Amend the Clause by making contributions voluntary or deleting the proposal since the mandatory deduction will mean that an individual's disposable income goes down.

Committee Observation

The Committee proposed an amendment to the Clause to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 54, 4B

395. Amend Clause 54 by deleting paragraph 4B. to maintain the original timelines given that this will bring logistical challenges.

Committee Observation

The Committee rejected the deletion of paragraph 4B. However, the Committee amended the clause to allow remission of withheld tax within 5 working days.

3.47 PETROLEUM OUTLETS ASSOCIATION

In a meeting with the Committee held on 21st May 2023, Petroleum Outlets Association proposed the following amendments to the bill

396. Amend Section 42, by inserting Subsection (4A) **"The Commissioner may at any time exempt any supplier from the provisions of this section if such supplier has sufficiently demonstrated that due to the nature of his business, and due to the application of this section, he is going to be in a continuous credit position for a period of not less than twenty-four months"**. This is because the Bill proposes an Increase of VAT from 8% to 16%, Petroleum business operates at a margin of less than 1%. Withholding 2% of the value products means holding an amount that is about seven times more, than the margin realizes on the sales of the same. Allowing the KRA Commissioner to determine business-worthy exemptions would save the industry from imminent collapse. KRA introduced the TIMS ETR, the industry complied therefore solving the problem of visibility which occasioned the obligation of Withholding on VAT.

Committee Observation

The Committee agreed with KRA to engage the stakeholders to find the solution

3.48 WE CARE ORG

Clause 24 (vii) (m)

397. Amend the Clause by revising the proposed rate of 15% to 55 because this will allow digital content creators, the majority being youths to access capital and venture into different businesses

Committee observations

The Committee took note of the proposal and therefore amended the withholding tax rate to 5%.

Clause 28

398. Delete Clause 28 because increasing VAT from 8% to 16% on petroleum products will have adverse effects on the economy especially in the manufacturing and transportation sectors and the effects will be replicated in the general prices of goods and services and will further increase the high cost of living.

Committee observations

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

3.49 TAX-WISE CONSULTING

Income Tax Act

Clause 24

399. Amend the Clause by deleting (b) because it will reduce the disposable income of the high-income earners and as a result lead to a potential reduction in consumer spending and make Kenya a less attractive market for high-income earners and expatriates.

Committee Observations

The Committee rejected the proposal to delete clause 24. However, the Committee amended the Clause by introducing the band of 500,000- 800,000 at 32.5% per month and a band of above 800,000 at 35% per month

Clause 5 (a) (i)

400. Amend the Clause by deleting (a)(i) because the proposal is discriminatory as the same provision does not apply to privately employed persons. This proposal goes against the tenets of public finance espoused in Article 201 of the Constitution which requires fairness as well as openness and accountability in the use of public money and the cannon of equity in taxation.

Committee Observations

The Committee considered the proposal, relative to what the stakeholder was proposing and observed that the provision in the bill relates to the duties performed only by public officers. The Committee rejected the proposal

Clause 12 (a)

401. Amend the Clause by deleting Paragraph (a) because the swift implementation of this provision will prove strenuous for businesses that while compliant in invoicing under TIMS are yet to streamline their expenses incurred with the TIMS regime. This will further disadvantage small businesses and employees who are below the threshold for VAT registration.

Committee Observation

The Committee does not support the deletion of Clause 12 (a) of the Finance Bill, 2023. This is because Clause 47 of this Bill provide for the exemption of certain person from the requirement to register from the electronic tax invoice management system. The Commissioner would provide administrative guidelines to clarify the issues raised on the implementation of the system.

Clause 6

402. Amend the Clause to include a reasonable tax rate that will ensure equity by providing a proportionate rate ensuring a level playing field for branches and subsidiaries operating in Kenya.

Committee Observations

The proposal was accepted and the Committee therefore recommended a 15% tax rate. This will be in alignment with the rate of the withholding tax applicable on dividends paid by a resident for equity and fairness.

Clause 7

403. Delete Clause because the proposed changes will cause economic double taxation and go against the OECD position on the characterization of transactions between related persons.

Committee Observations

The Committee observed that the resident entities are only withholding agents and do not suffer the taxes they seek to be refunded. The Committee further observed that the issue of overpayment or double payment does not arise. The proposal was therefore rejected.

Clause 20 (b)

404. Amend Clause 20(b) because the proposal poses an administrative burden on the appointed agent, especially in cases where they manage several properties as they will have to make several declarations within a given month.

Committee Observations

The Committee rejects the proposal to delete paragraph (b). However, the Committee observed that the proposal in the Bill to have withholding tax agents remit the withheld tax within 24 hours is cumbersome and costly to businesses. Therefore, the Committee proposed to increase the period to 5 working days.

Clause 28

405. Delete Clause 28 because it will raise the cost of household commodities, transportation and electricity production, thus aggravating inflation which the Central Bank of Kenya is battling to control. This would have a ripple effect on the economy due to the increased cost of living.

Committee Observations

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 34

406. Amend Clause 34 to provide for zero-rating on all exported taxable services to enable taxpayers to claim VAT refunds for all the VAT amounts that cannot process exemptions in Kenya. The exemption will disentitle VAT-registered taxpayers from claiming a deduction of the input VAT suffered on acquiring taxable business purchases. Non-recoverable input tax that arises due to exemption becomes a business cost to the registered person and may impact the person's profitability. International best practice stipulates that VAT should be a tax borne by the end user of either goods or services. Further, this move is likely to deter investments in Kenya as a service center due to the increased cost of doing business.

Committee Observations

The Committee adopts the proposal and therefore deleted paragraphs 11, 16, 19, 20 21, 23, 24, 25

Clause 43 (a) (vi)

407. Amend the Clause by deleting (a) paragraph (vi) because this will severely affect the fish market as the prices will jump for fish and fish-related products in the country. Inadvertently the fish market demand will significantly reduce as alternative cheaper substitutes for fish in the market will be embraced.

Committee Observations

The Committee observed that Kenya and the Region have the capacity to produce fish in adequate supplies. The imported fish has impacted negatively on locally bred and produced fish and provided unnecessary competition to fish farmers. The proposed excise duty will protect local production. The Committee rejected the proposal.

Clause 59

408. Delete Clause 59 because the proposal will be detrimental to taxpayers seeking justice because the restriction is only on the side of the Taxpayer and not the Commissioner.

Committee Observations

The Committee observed that the proposal restricts the power of the court to admit new grounds of appeal depending on the circumstance and further takes away the inherent power of the courts to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The Committee adopts the proposal

Clause 36

409. Delete Clause 36 because it will impose an unfair burden on taxpayers and affect business cash flows where taxpayers are compelled to provide security for their appeals to be heard.

Committee Observations

The Committee observed that the requirement to deposit 20 % of the disputed tax before an appeal to the High Court would limit the right to access justice. Further, the Committee observed that the High Court has inherent authority to set the requirement for a deposit as it deems appropriate under the circumstance. The Committee adopts their recommendations.

Clause 68

410. Delete Clause 68 because it will increase the cost of importation of goods to Kenya. The imposition of this levy on imports discriminates against goods from certain countries or regions. Other countries could perceive the levy as a trade barrier and respond with retaliatory measures, such as imposing tariffs on the exporting country's goods. Additionally, this may also discourage foreign investors from importing their products hindering innovation in the market hence it could potentially discourage foreign direct investment (FDI) limiting economic growth and job creation.

Committee Observations

The introduction of the export and investment promotion levy is aimed at boosting local manufacturing, promote exports, promote the value chain and create more jobs in the country by providing aggregation centers in the counties. The Committee observed the need to clean up subclause (4) as the word 'to' was misplaced in the sentence. The Committee rejects the proposal

Clause 76

411. Delete Clause 76 because of ongoing inflation and change in the economic times, as people in the country are straining to keep alive and most are striving to make ends meet. In addition, since the additional tax will be charged to everyone, it wouldn't make sense to those who already own homes.

Committee Observations

The proposal is amended to make a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.50 LEXLINK CONSULTING

Clause 24

412. Delete the Clause by deleting Subsection (b) because it seems to penalize hard-working Kenyans in addition to the already existing high taxes.

Committee Observations

The Committee rejected the proposal to delete clause 24. However, the Committee amended the Clause by introducing the band of 500,000- 800,000 at 32.5% per month and a band of above 800,000 at 35% per month

Clause 24 (vii) (m)

413. Amend the Third Schedule, Head B paragraph 5 by harmonizing the rate at 5% to align to that of professional and management fees instead of the 15% proposed rate.

Committee Observation

The Committee adopts the proposal and therefore amends the withholding tax rate to 5%.

Clause 24 (x)

414. Amend Clause 24 subsection (b) by deleting (x) because the proposal assumes a high-profit margin for the SME Sector which is not accurate and hence the rate be retained at 1%.

Committee Observations

The Committee observed that this was reduced to 1% to cushion small businesses from the effects of COVID-19. The proposal was rejected

Clause 28

415. Delete Clause 28 because increasing the VAT on fuel to 16% will further increase the cost of living.

Committee Observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 76

416. Amend Clause 76 by making the housing levy voluntary and enable an individual to have an option of contributing to a private scheme which can be converted into a pension. This is because in the poll they conducted, 94% of the citizens who participated did not believe in the justification of the mandatory contribution as home ownership was a personal decision and the State should not interfere.

Committee Observation

The proposal is amended to make a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.51 VIFFA CONSULT

Clause 24 (vii) (m)

417. Amend the Clause by reducing the rate of withholding tax to 5% because the withholding tax payable should be 5% which levels the playing field with the rest of professional services. In addition, it should not discriminate against those conducting online businesses. Also, licenses required by content creators should not exceed 1.5% of either turnover or KES100,000 per Annum, whichever is lower. This is to encourage the formalization of online businesses. Incapacitated persons should be protected from the actions and/or inactions of their trustees/guardians. Such trustees/guardians should be held personally liable for tax demands arising from earnings made by incapacitated persons. Lastly, withholding tax paid by content creators who earn up to KES 600,000 per annum should be deemed as the final tax, and therefore not be subjected to turnover tax. Any attempt to introduce additional costs in the form of taxes will only serve to discourage their growth.

Committee observation

The Committee adopts the proposal and therefore amends the withholding tax rate to 5%.

3.52 ACCA

Clause 12

418. Amend the Clause by deleting paragraph (a) because the proposal is likely to disenfranchise small traders who may not qualify for VAT registration and traders who supply exempt products and are therefore not required to have eTIMS.

Committee Observation

The Committee does not support the deletion of Clause 12 (a) of the Finance Bill, 2023. This is because Clause 47 of this Bill provide for the exemption of certain person from the requirement to register from the electronic tax invoice management system. The Commissioner would provide administrative guidelines to clarify the issues raised on the implementation of the system.

Clause 20 (c)

419. Amend Clause by deleting paragraph (c) on the due date for withholding tax because the proposal will increase compliance burden and operational costs on the part of the taxpayer.

Committee Observation

The Committee rejects the proposal to delete paragraph (c). However, the Committee observed that the proposal in the Bill to have withholding tax agents remit the withheld tax within 24 hours is cumbersome and costly to businesses. Therefore, the Committee proposed to increase the period to 5 working days.

Clause 10 (4)

420. Amend the Clause by deleting paragraph 4 because the 24-hour timeline for remittance of the tax will be administratively onerous.

Committee observation

The Committee observed that the tax alluded to is a government revenue already charged and should be remitted as soon as it is collected. The Committee rejected the proposal.

Clause 36

421. Amendment by deletion of clause 36 on security appeal to the High Court because the proposal is likely to bar some tax players from accessing justice especially where the amounts in dispute are significant. Also, this proposal was rejected in the past as being punitive to taxpayers.

Committee observation

The Committee observed that the requirement to deposit 20 % of the disputed tax before an appeal to the High Court would limit the right to access justice. Further, the Committee observed that the High

Court has inherent authority to set the requirement for a deposit as it deems appropriate under the circumstance. The Committee adopts their recommendations.

Clause 59

422. Delete Clause 59 because the proposal contradicts the proposed provision under Tax Appeals Tribunal Act, which if passed, would allow taxpayers to produce documents and such other information as may be necessary for the Tribunal to make a decision.

Committee observation

The Committee observed that the proposal restricts the power of the court to admit new grounds of appeal depending on the circumstance and further takes away the inherent power of the courts to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The Committee adopts the proposal

Clause (76)

423. Amend the Clause to make it a voluntary opt-in Scheme because making the scheme mandatory will be punitive to homeowners and those under home ownership schemes also publishing quarterly reports will enhance accountability to an already skeptical public.

Committee observation

The proposal is amended to make a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.53 KENYA TOBACCO CONTROL ALLIANCE

424. The organization was in an opinion to urge the government to safeguard the determination of taxation levels from tobacco and alcohol industry interference, the Kenyan government must prioritize public health objectives, effectively implement evidence-based tax policies, and protect the well-being of its population.

Committee Observation

The Committee appreciated comments by Kenya Tobacco Alliance

3.54 SAFARICOM LIMITED/PWC

Clause 36

425. Delete clause 36 of the Bill since it will adversely affect cashflow and liquidity as taxpayers will be deprived of the funds that could be used as working capital; the proposal will affect Kenya's attractiveness for foreign direct investments; the proposal under the Finance Bill is unconstitutional as it impedes a taxpayer's right to access justice; right to a fair trial; and the right against deprivation

of property. Additionally, Safaricom noted that the existing mechanism for the protection of tax in dispute is sufficient to address the apprehension sort under this proposal.

Committee Observation

The Committee observed that the requirement to deposit 20 % of the disputed tax before an appeal to the High Court would limit the right to access justice. Further, the Committee observed that the High Court has inherent authority to set the requirement for a deposit as it deems appropriate under the circumstance. The Committee adopts their recommendations.

Clause 12

426. Delete Clause 12 of the Bill because the proposal will negatively impact the operations of small businesses; it will be administratively onerous and will make MSMEs uncompetitive noting that most are not registered for VAT purposes as they have not met the threshold for VAT registration.

Committee Observation

The Committee does not support the deletion of Clause 12 (a) of the Finance Bill, 2023. This is because Clause 47 of this Bill provide for the exemption of certain person from the requirement to register from the electronic tax invoice management system. The Commissioner would provide administrative guidelines to clarify the issues raised on the implementation of the system.

Clause 43

427. Amend the Clause to retain the excise duty at 12% as opposed to the proposed 15% for money transfers because additional taxes will be detrimental to M-Pesa customers and consequently curtail economic growth; additionally, taxation should not be used as a basis for regulation

Committee Observation

The Committee observed that the proposal to increase excise duty to 15% was meant to harmonize the taxation of fees charged by financial institutions, money transfer and cellular phone services. The Committee rejected their proposal

Additional Amendments Proposed

428. Amend Paragraph 4 of the Second Schedule to the Income Tax Act on investment allowances by inserting the following new paragraph immediately after paragraph 4 “ *where the sale is between a buyer who is a body of persons over whom the seller has control, or the seller is a body of persons over whom the buyer has control, or both the seller and the buyer are bodies of persons and some other person has control over both of them and is a sale which would give rise to a balancing charge or trading receipt, and the parties to the sale by*

notice in writing to the commissioner may elect to transfer an item referred to paragraph 1 at the tax written value, but no election shall be made in any case where either the buyer or the seller is at the time of sale a non-resident person”

Committee Observation

The Committee observed that the proposal was a new amendment not in the bill and therefore rejected.

3.55 CONSORTIUM OF TELECOMMUNICATION OPERATORS IN KENYA/PWC

Clause 34

429. Amend clause 34 of the Bill to insert a new paragraph within part A of the Second Schedule to the VAT Act to include the supply of locally assembled and manufactured mobile phones. This will be helpful to support the government’s initiative to promote local manufacture and assembling of mobile phones to promote penetration and digitization agenda.

Committee Observation

The Committee observed that the proposal is a new amendment not in the bill. The proposal was rejected.

New Clause

430. Amend the Second Schedule of the Excise Duty Act by inserting a new paragraph to make Excise Exempt disassembled/unassembled kits for local assembly or manufacture of mobile phones

Committee Observation

The Committee observed that the proposal is a new amendment not in the bill. The proposal was rejected.

3.56 PETROLEUM INSTITUTE OF EAST AFRICA (PIEA)

In a meeting with the Committee held on 20th May 2023, the Petroleum Institute of East Africa proposed the following amendments to the bill.

Clause 4

431. Amend the Clause to remove the three years. The introduction of three years from the date the loss was realized, being the duration, a person is eligible to claim realized foreign exchange loss will result in taxpayers forfeiting it where the interest restriction rules still apply.

Committee Observations

The Committee adopted the proposal by PIEA and amended the period to claim foreign exchange loss to not more than five years. The Committee observed that the period is sufficient for individuals to claim foreign exchange loss.

Clause 5(a)(ii)

432. Amend the Clause by deleting – ‘*club entrance and subscription fees disallowed against the employers' income.*’ and substituting it with – ‘*club entrance and subscription fees allowed against the employer's income.*’ The proposed amendment will ensure the expenses are subjected to tax on the employee only if they have not been taxed on the employer.

Committee Observation

The Committee adopted the proposal to replace the word ‘disallowed’ with ‘allowed.’ The Committee observed that the proposed amendment will remove the element of double taxation.

Clause 24

433. Amend Clause by deleting paragraph (b) because the increase in individual tax rates may result in the migration of high-earning individuals, such as expatriates and entrepreneurs, to countries with lower tax rates. Further, this trend could lead to a loss of skilled labor from the country and undermine the Government’s efforts to position Kenya as an attractive destination for international workers and individual investors.

Committee Observation

The Committee rejected the proposal to delete clause 24. However, the Committee amended the Clause by introducing the band of 500,000– 800,000 at 32.5% per month and a band of above 800,000 at 35% per month

Clause 28

434. Delete Clause 28 because the proposal to increase the VAT rate to 16% will significantly increase the cost of fuel by Kes 12.56 and 12.76 per litre for Diesel and Petrol respectively which is an integral commodity in the Kenyan economy. Consequently, the higher cost of fuel and consequently production will result in higher prices of goods in the Kenyan market and may negatively impact the cost of living impacting the Government's quest to grow the economy leading to adverse political consequences.
435. We propose to change the VAT classification from exempt to ZERO-RATED i.e. include LPG as part of the Second Schedule to zero rate it as opposed to exempting it from VAT to facilitate more benefits to the final consumer. Additionally, LPG being a cleaner source of energy is healthy and environmentally friendly. It is worth noting that zero rating makes supplies cheaper since the input VAT incurred is claimable for offset against output tax.

Committee Observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the

differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 30 (b)

436. Amend the Clause by deleting subsection (b) because the current clause subjects insurance compensation to VAT. Insurance compensation, in its nature, is not a taxable supply. The proposal to “treat it” as a taxable supply is an illegality.

Committee Observation

The Committee observed that the Finance Bill, 2023 proposes to deem as a supply compensation received by a supplier of taxable supplies where input tax had been claimed. The Committee rejects the amendment.

Clause 36 (a) &(b)

437. Delete Clause 36 because it will negatively affect taxpayers' cashflows as court processes in Kenya can go on for years. Further, there is no provision that the money will earn interest while at the Commissioner's hands should the outcome be in favor of the taxpayer, which will further erode the taxpayer's financial position if the ruling is eventually in favor of the taxpayer.

Committee Observation

The Committee observed that the requirement to deposit 20 % of the disputed tax before an appeal to the High Court would limit the right to access justice. Further, the Committee observed that the High Court has inherent authority to set the requirement for a deposit as it deems appropriate under the circumstance. The Committee adopts their recommendations.

Clause 54

438. Delete Clause 54 because having different reporting timelines will pose a challenge in terms of VAT compliance as taxpayers will now be subject to a timeline difference from the monthly reporting that is normally done. Further, it is worth noting that presently the withholding of VAT certificates is delayed and daily payment will lead to further administrative burden to KRA and taxpayers.

Committee Observation

The Committee rejects the proposal to delete clause 54. However, the Committee amended the clause to allow remission of withheld tax within 5 working days.

Clause 76

439. Delete Clause 76 because the introduction of additional deductions from employee emoluments will further reduce the take-home pay of employees and further overburden employers with the increased cost of employment and may lead to loss of current employment or potential employment opportunities.

Committee Observation

The Committee proposed an amendment to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.57 DIGITAL FINANCE SERVICE ASSOCIATION OF KENYA

In a meeting with the Committee held on 20th May 2023, the Digital Finance Service Association of Kenya proposed the following amendments to the bill.

Clause 7

440. Delete Clause 7 because it will likely result in the double taxation of residents with intra-group service recharges with related parties. This is because any adjusted amount/ disallowed service fees are usually further taxed as deemed dividend under Section 7(b)(v) and thus subject to withholding tax at 15%, or otherwise disallowed and therefore subject to tax at 30% or 37.5% (for branches).

Committee Observation

The Committee observed that the proposal will likely deter tax planning by multinational entities. The Committee further observed that the resident entities are only withholding agents and do not suffer the taxes they seek to be refunded and therefore the issue of overpayment or double payment does not arise. Consequently, the Committee rejects their proposal

Clause 20 (c)

441. Amending the Clause by deleting paragraph (c) since a twenty-four-hour deadline to remit withholding tax, will exert strenuous pressure on taxpayers to meet the expected obligation.

Committee Observation

The Committee rejects the proposal to delete the clause. However, the committee amends the deadline to remit withholding tax to 5 working days.

Clause 36

442. Delete Clause 36 because it will impose significant cashflow constraints on taxpayers as they seek the resolution of a tax dispute before the courts. Further, the proposal will also deny taxpayers who may lack the means to deposit 20% of the disputed tax an opportunity to appeal an unfavorable decision from the TAT. This would contravene the right of access to justice under Article 48. Furthermore, it is discriminatory as it assumes that the revenue authority has a stronger case/ higher likelihood of success.

Committee Observation

The Committee adopts the proposal to delete Clause 36. The Committee observes that the high court has the discretion to determine the security once a matter is before the court.

Clause 41

443. Delete Clause 41 because it will impose an administrative burden and potentially increase the cost of excise duty compliance for affected service providers where the CG requires taxpayers in a certain sector to remit excise duty within 24 hours.

Committee Observation

The Committee observed that the tax is government revenue already charged and should be remitted as soon as it is collected. The Committee therefore rejected their proposal.

Clause 54 (b)

444. Amend Clause by deleting paragraph (b) because it will create an administrative burden for taxpayers to meet this obligation due to the volume of invoices many withhold VAT on.

Committee Observation

The Committee rejected the proposal to delete paragraph (b). However, the Committee amended paragraph (b) to increase the deadline for the remission of withheld tax to five (5) working days

Clause 26 (a)

445. Amend Clause 26 by deleting paragraph (a) because the proposal has not clarified who has the obligation to pay the CGT circumstances where disposal is undertaken outside Kenya, as the liability could be imposed on the Kenyan entity in which the shares have been transferred or on the non-resident person who disposes of the shares in the offshore entity. We hope that further clarity will be provided in this regard.

Committee Observation

The Committee observed that this is not a new tax and the current treatment on computation of tax and incidence will continue. The Committee further observes that for any issue that requires clarification, the Commissioner can issue a public/private ruling in accordance with Tax Procedures Act. The proposal is rejected.

3.58 ASSOCIATION OF MICROFINANCE INSTITUTION (AMFI)

Clause 43

446. Amend Clause 43 (b) part II by deleting paragraph 6 because there is an existing framework of taxation of financial service institutions, failure to carefully craft legislative proposals may lead to instances of double taxation, limit access to credit facilities and hence curtail economic growth; and increase the cost of digital lending.

3.59 FRESH PRODUCE EXPORTERS ASSOCIATION

Clause 28

447. Delete clause 28 because an increase in VAT on fuel will result in an increase in the cost of freight as well as domestic logistics cost making the horticulture sector uncompetitive

Committee Observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 76

448. Delete clause 76 because it will reduce the net income for many employees and will be a heavy burden on employers such that it might drive unemployment to unprecedented levels.

Committee Observation

The Committee proposed an amendment to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 9

449. Delete clause 9 to retain the current rate and band of turnover tax because the horticulture industry has a significant number of Small & Medium Sized enterprises which will greatly impact their businesses if the proposals in the finance bill are passed

Committee Observation

The Committee rejects the proposal to delete Clause 9. However, the Committee proposes an amendment to the TOT threshold to “one million shillings but does not exceed twenty-five million shillings” in line with the government’s agenda of promoting business.

3.60 CENTRAL ORGANIZATION OF TRADE UNIONS

Clause 17

450. Amend clause 17 to exclude trade unions as part of the clause since the clause uses the words trade association which may erroneously be interpreted to include trade unions whose legal framework is distinct and with a distinct mandate.

Committee Observation

Proposal not supported

3.61 NAS HOLDING

Clause 76

451. Amend clause 76 to make the proposed contributions to the National Housing Fund voluntary for both employees and employers. This will allow the cost of employment to be under the control of the employer.

Committee observation

Proposal not supported

3.62 UNITED ENERGY AND PETROLEUM ASSOCIATION

Clause 28

452. Amend by deleting Clause 28 which proposes a 16% tax rate on petroleum products and retain the current rate of 8%. The proposed tax rate of 16% assumes that value is added along the supply chain. With the current price cap by EPRA, there is no value that a trader can add therefore, the government should not expect any increase in the tax due to value addition since the profit is already predetermined.

Committee Observation

Proposal not supported

3.63 ASSOCIATION OF CONSULTING ENGINEERS OF KENYA

Clause 24 (b)(x)

453. Delete clause 24(b) (x) because increasing the rate of turnover tax from 1% to 3% may discourage the informal sector from embracing the Turnover Tax as the increase in rates may be viewed as punitive. This increase may result in a negative impact on the economy as some players in the informal sector may be forced out of business due to turnover tax increment.

Committee Observation

Proposal not supported

Clause 36

454. Delete Clause 36 because is punitive on taxpayers and it is likely to attract the same rejection. It is indeed a limitation of taxpayers' access to justice and their right of appeal as a party unable to make the payment within the tight appeal timelines would be forced to forgo their right to appeal. Given that tax disputes can take several years to be resolved even before the High Court, the provision is likely to significantly affect the cash flows of taxpayers, hence limiting their operations. The provision may also result in KRA raising exaggerated assessments with the view of collecting 20% of such assessments where it wins such a case. It also provides the KRA with a powerful bargaining position in an alternative dispute resolution process as taxpayers may be intimidated to settle cases rather than pursue the litigation process. This provision is therefore not only punitive but also unfair to the taxpayers.

Committee Observation

Proposal not supported

Clause 76

455. Delete Clause 76 because the proposal will overburden employers with increased costs of employment and may lead to loss of current employment or potential employment opportunities. Making the provision mandatory for every employee to contribute to the National housing development fund is not only unrealistic but also inconsiderate, especially during this difficult economic situation in the county. Many employees do not have any intention of owning houses in cities or towns. Additionally, Most employees already have ongoing plans and schemes toward acquiring their own houses; some are already servicing mortgages while others are already in the process of building their own houses. It will be very unfair for the government to force these people to start contributing to the national housing fund that they don't need at all. The national housing development fund is only a priority for this government. It is not guaranteed that the next regime will have the same priority.

This leaves a question, what then happens to the fund and the contributions of individual employees in the case of regime change or change in priorities?

Committee Observation

3.64 KENYA PROPERTY DEVELOPERS ASSOCIATION

Clause 20

456. Amend Clause 20 by deleting paragraph b (3AB) because it is likely to present administrative and accounting difficulties also this may create the risk of double-withholding of tax on the same rental income where a tenant is appointed as a rental income withholding agent and the landlord's agent is appointed a rental income withholding agent.

Clause 76

457. Delete Clause 76 because it will overburden employers with the increased cost of employment and may lead to loss of current employment or potential employment opportunities. It is recommended that the government consider alternative ways to finance the National Housing Development Fund, such as increasing taxes on luxury goods or reallocating funds from other areas of the budget.

Clause 36

458. Delete S 36(a) because the proposal is likely to hamper access to justice for aggrieved taxpayers and lock up funds belonging to taxpayers (landlords and real estate persons) and disincentive taxpayers wishing to challenge decisions made by the tribunal as the deposit requirement may be untenable to most taxpayers.

Clause 43

459. Amend the Clause by deleting Subsection (a) paragraph (vi) because this will increase the costs of these key imports, leading to an increase in the cost of housing.

Committee Observation

3.65 ASSOCIATION OF WOMEN ACCOUNTANTS.

Clause 76

460. Amend the Clause by contributing to the National Housing Development Fund voluntarily and putting in place a framework that works equally for the formal and informal sectors.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 28

461. Delete Clause 28 because an increase in the cost of petroleum products has an impact on electricity cost, the cost of manufacturing leading to higher prices of necessities, the stakeholder recommended that the government to reduce or eliminate taxes on fuel, thus easing the inflationary pressure on the economy.

Committee Observations.

Proposal not supported

3.66 STRATHMORE UNIVERSITY

Clause 43 (b) (iii)

462. Amend the First Schedule of the Excise Duty Act Part II, paragraph 3 by deleting the rate of 15% of excise duty on fees charged for money transfer services by cellular phone service providers. The proposal to increase the rate from 12% to 15% will likely increase the cost of transacting through mobile money services for Kenya's majority unbanked population. In addition, the proposal may fail to raise the targeted revenue for the government as users may decide to simply reduce the volume of transactions.

Committee Observations

Proposal not supported

3.67 MR. MARVIN CHEGE (FOUNDER AND EDITOR-IN-CHIEF OF VIRAL TEA KE)

Clause 2(b)

463. Delete Clause 2(b) because placing a 15 percent withholding tax on Kenya's content creation market has the potential to strain it and discourage other individuals from entering the field, if they wanted to. Further, they proposed that if the Government must tax, maybe a 3 or 5 percent withholding tax just like other professional services, though digital native media is something very new to this country.

Committee's observation

Proposal is supported

3.68 MWANGI AND KAMWARA ASSOCIATES LLP

Clause 2(a)

464. Delete Clause 2(a) because the proposal to deduct stakes won will mean that even the stakes will be taxed. This is set to have a devastating blow to the gaming sector as it will make local gaming unattractive compared to offshore gaming. Deleting the Clause will help create a level playing field with other offshore gaming companies.

Clause 24(b)(xii)

465. Amend Clause 24(b) (xii) from 15 percent to 7.5 percent and the rate to be incremental across the years. This will help in nurturing the industry and promote youth employment. The introduction of 15 percent Digital Content monetization will affect paid partnerships, including brand ambassadors, locals and non-residents.

Committee's observation

Clause 2

466. Delete Clause 2 because tax liability of ancestors, parents, uncles, aunties, parents, step-parents, children, nieces, nephews e.t.c may be imposed on an individual. It will also increase the scope of transactions that require arms-length consideration. The amendment conflicts with the Constitution of Kenya 2010 as well as known international instruments like OECD and UN tax convention requiring personal responsibility on tax liability.

Committee's observation

Clause 4

467. Amend Clause 4 for the commencement to start after one year. Companies with significant foreign exchange may face higher financial risks if they cannot offset exchange losses against taxable income within 3 years. This could lead to a higher borrowing cost, reduced profitability, higher and tax burden. Companies may face a competitive disadvantage compared to businesses in countries where foreign exchange losses are deductible. This could lead to reduced foreign direct investment impacting economic growth and job creation. Businesses may need to adjust their capital structures to minimize the impact of non-deductible foreign exchange losses. The deferment allows internal re-organization of companies to mitigate the effects of the proposal.

Committee's observation

Clause 6

468. Amend the provision to take into account a tax rate for the repatriated income, assess the implication of the provision with other Double tax treaties, consider deferment for one year and align the proposal with other international tax instruments like OECD and UN tax conventions. The proposal will lead to double taxation since the repatriated income will also be taxed in the non-resident's home country.

This may create an additional financial burden for multinational companies and reduce the attractiveness of investing in Kenya. The proposed recommendations will create certainty in the implementation of the tax.

Committee's observation

Clause 12

469. Amend Clause 12 to provide that the expenditure/loss would only be allowed where a taxpayer has been exempted by the commissioner from the use of the electronic tax invoice management system. This cures the accrual concept arising from the claim ability of pending invoices especially for small traders below the threshold.

Committee's observation

Clause 26

470. Amend Clause 26 to provide a provision to allow exemption from the use of the original adjusted cost as determined in the first transfer where the subsequent disposal within the 5 years arises from an emergency and the taxpayer demonstrates to satisfaction of the commissioner on the same. The provision does not provide for **guanine** transactions arising out of emergency circumstances. The Changes may result in tax disputes between taxpayers and tax authorities, particularly in cases where the application of capital gains tax exemptions or adjusted cost provisions is unclear or contested. The proposal cures the mischief and protects guanine transactions not motivated by the need to avoid CGT liability.

Clause 28(a)

471. Delete Clause 28(a) to reduce the various taxes on petroleum products because taxes on petroleum products in Kenya currently account for 40 percent of the total costs at the retail price. This is unlike other African countries where the taxes at retail price account for an average of 10-30 percent.

Committee's observation

Clause 36(a)

472. Delete Clause 36(a) and strengthen the objections review process and use of ADR to mitigate the number of tax disputes going to appeals at the Tax Appeals Tribunal (TAT), increase the capacity and member composition of the Tax Appeals Tribunal to improve the turnaround time of dispute resolution. The proposal cures the intended mischief of the proposed amendment.

Clause 76

473. Delete Clause 76 altogether or in the alternative, amend the rate from 3 percent to 1.5. The proposal is discriminatory between employed and non-employed, violates the right to equality before the law

and affects a person's right to property and socio-economic rights as protected by the Constitution. This will cure the apparent constitutional deficit and alleviates the costs for both employees and employers.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.69 MARKETING SOCIETY OF KENYA

Clause 24

474. Amend Clause 24 by deleting (b)(vi) because the lack of a threshold could create a financial burden for smaller content creators who may struggle to afford the tax payments.

Committee Observation

3.70 PUBLIC SERVICE SECTOR TRADE UNIONS

Clause 24

475. Amend Clause 24 to include a new tax band at 25 percent. The effect of PAYE from the current 30 percent to 35 percent on those earning Ksh500,000 and more will be felt down the chain, this will put more money in Mwananchi pocket and hence help spur consumption.

Clause 5

476. Delete Clause 5 because the proposal to tax per diem at 30 percent because this money is normally meant to offset the actual expenses while in the field. In the alternative, amend the Clause to propose an increase of 30 percent of the current per diem before taxing it at the same level.

Clause 76

477. Delete Clause 76 until proper consultation and negotiation with workers' representatives has been done or in the alternative, amend the Clause to make the levy optional such that the Government can collapse all current mortgage schemes for state officers and other benefitting entities it sponsors and directs the funds to the housing levy development fund.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.71 ASSOCIATION OF INSURERS & BROKERS OF KENYA

Clause 30

478. Amend Clause 30 by deleting paragraph (b) because the rationale for the proposed change is not clear as compensation for loss of goods does not comprise ‘consideration’ (as defined in the legislation) for a taxable supply of goods and it is unlikely underwriters will include VAT on the compensation payment. Further, the Institution proposed for public participation by all insurance stakeholders to enable an understanding of cardinal principles of insurance contracts practically as they relate to indemnity.

Clause 43c (ii)

479. Amend Clause 43c (ii) by deleting the following words “*relating to their licensed activities*” appearing in the definition of “*other fees*” because the proposal introduces unfair taxation of services supplied by intermediaries (and other financial institutions) as a similar type of services offered by non-financial institutions will not be similarly taxed. This in their view is discrimination.

Clause 36

480. Delete Clause 36 because the proposal limits a taxpayer’s access to justice and right to a fair hearing. This is particularly onerous for entities that are exposed to numerous disputes with KRA. Also, Insurance brokers have been involved in a variety of disputes with the KRA in the recent past that are subject to litigation, and which the courts have been in their favor. Upfront 20% of the disputed assessment is bound to affect both the cashflows and the appetite to litigate matters in the courts for adjudication.

3.72 KENYA SUGAR MANUFACTURERS ASSOCIATION

In a meeting with the Committee held on 20th May 2023, Kenya Sugar Manufacturers Association proposed the following amendments to the bill

Clause 24

481. Amend Clause 24 subsection (b) paragraph(viii)(a) to read “*provided that advance tax shall not be imposed on vans, pick-ups, trucks, prime movers, trailers & lorries or tractors or used for the transport of agricultural produce.*” This proposal if passed will subject all other vehicles used in the agriculture value chain to advance tax, thereby increasing costs to farmers. this will ultimately result in higher food prices to Kenyans.

Clause 33(a)(30)

482. On Clause 33(a)(30) delete the proposal and maintain the existing paragraph 21 of part A of the Second Schedule to the VAT Act 2013 as it is. This will maintain the existing zero rating of transport of sugarcane from farms to milling factories.

Clause 43(vi)

483. Amend Clause 43 (vi) to read “*imported industrial refined sugar KES 5 per Kg*”. The amendment if passed into law will greatly increase the cost of sugar an essential food item for Kenyans. Further, the Association informed the committee that imported industrially refined sugar should also be subjected to an export promotion levy at the rate of 10% to encourage domestic manufacture of industrially refined sugar.

3.73 KIBOS DISTILLERS AND KIBOS PAPER

Section 68

484. Amend Clause 68 by adding: ‘*HS code 4804.11.00, HS code 4804.31.00 and HS Code 4804. 41.00*’ be subjected to import duty at 25%, export and investment promotion levy at 10% as there is adequate local capacity. This is because this will encourage domestic kraft paper manufacturing from biomass. Such an approach embraces the climate change policy that Kenya has adopted. it will provide forest cover reduce the carbon footprint and increase revenue collection for the government.

Committee Observations

3.74 FREE KENYA MOVEMENT

Clause 34

485. Amend Clause 34 to include the following items to the schedule of zero-rated commodities

- (i) Petrol, Kerosene and Diesel including excise duty, VAT and all levies etc.
- (ii) LPG Gas and usage of LPG (cooking and other usages including transport)

- (iii) All forms of taxation on the domestic production of water
- (iv) All forms of wheat meal and wheat-based items
- (v) All forms of maize meal and maize-based items
- (vi) All forms of locally produced rice and rice-based items
- (vii) All home-used milk and milk-based items
- (viii) All sanitary towels and sanitary items
- (ix) Electricity and generation of electricity
- (x) All cooking oils
- (xi) All essential medicines, medical services and medical items
- (xii) All school-based books and school-use items include uniforms, sets, pens, pencils, rulers, computers and laptops.
- (xiii) All electronic communication such as airtime and internet
- (xiv) All locally manufactured and locally available building materials.
- (xv) All forms of essential agricultural inputs of production.

486. Upon zero-rating these items, the high cost of living will drastically drop and exiting companies and industries will in the next 2-6 months begin to hire unemployed Kenyans as their production cost will drop and production will increase and there will one kind of economic inclusion in the economic inclusion in the economic grassroots as the elevated purchasing power at this level will allow people to purchase informal street products and promote informal traders to the tax column.

Committee's observation

3.75 NCD ALLIANCE

New Proposal

Section 38

487. The Organization proposes retaining annual inflation adjustment for all tobacco products, alcoholic beverages and Sugar-sweetened beverages. According to the Organization removing it will only benefit manufacturers and increase consumption of unhealthy goods because prices will decrease and could have negative health and economic effects. By keeping the adjustment, the consumption will be steady because these products' relative prices do not decrease.

3.76 FURNITURE ASSOCIATION OF KENYA

Clause 43(a)(vi)

488. Delete Clause 43(a) (vi) because the proposed excise duty will cripple an already over taxed sector. It will be an addition to the taxes already levied on imported furniture including importing duty levied on wooden furniture and it will lead to increased prices of the imported furniture, which costs will be passed to the consumer with adverse effects. Consequently, the costs for producing quality furniture that can match the standards of imported furniture is considerably high and there is a likelihood of loss of jobs if the excise duty is implemented.

Committee's observation

Clause 28(a)

489. Delete Clause 28(a) since the proposed move is expected to raise the cost of living significantly and also raise the cost of conducting business including the furniture sector.

Committee's observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 36

490. Delete Clause 36 because this proposal contravenes Article 48 of the Constitution of Kenya, 2010 which promotes access to justice by stating that where fees are a requirement, they shall be reasonable and shall not impede access to justice. This amendment is aimed at discouraging tax payers from contesting the Taxman where they feel aggrieved by wrong taxation

Committee's observation

Clause 67 and Clause 69

491. The association supported the amendments as they are. The move to reduce the rate of import declaration fees from 3.5 per cent to 2.5 per cent and that of railway development levy from 2 per cent to 1.5 per cent. This move will have a positive effect in terms of reducing the financial burden in the importation of timber raw materials

Committee's observation

3.77 DIGITAL ASSOCIATION SERVICES KENYA.

Clause 7

492. Delete Clause 7 from the Bill because if enacted, the provision in Section 10 of the Income Tax Act, subsection (3) is likely to result in the double taxation of residents with intra-group service recharges with related parties. This is because any adjusted amount/ disallowed service fees are usually further taxed as deemed dividend under Section 7(b)(v) and thus subject to withholding tax at 15%, or otherwise disallowed and therefore subject to tax at 30% or 37.5% (for branches). Accordingly, precluding the refund for claiming With Holding Tax previously paid on the same disallowed amounts would amount to taxing the recharges twice, which would fly in the face of the principle of equitable taxation as envisaged under Article 201 of the Constitution of Kenya, 2010.

Committee's observation

Clause 12

493. Delete Clause 12 because the amendment is likely to have the unintended effect of moving businesses away from Micro, Small and Medium Enterprises (MSMEs) which will be perceived as being at a higher risk of non-compliance due to their non-issuance of electronic tax invoices. This is likely to have a detrimental impact on the MSME economy. Further, e-TIMS has not been fully implemented and embraced by all taxpayers, and hence pegging the deductibility of expenditures or losses to a system until it is fully operational is premature and likely to confuse, and inequity in any implementation process and will be an administrative burden to ascertain if suppliers' transactions are exempt in accordance with the Tax Procedures Act, 2015.

Committee's observation

Clause 20(c)

494. Delete Clause 20(c). The amendments to Section 35 (5) of the Income Tax Act, of a twenty-four-hour deadline to remit withholding tax, will exert strenuous pressure on taxpayers to meet the expected obligation. Taxpayers will be forced to monitor their transactions daily, and remit WHT on qualifying transactions. The compliance cost and administrative burden will increase for taxpayers and the Kenya Revenue Authority, which contradicts the canons of a good tax system.

Committee's observation

Clause 36

495. Delete Clause 36 because the proposed amendment to Section 32 of the TATA is retrogressive and should be deleted for the following reasons:

- (i) The proposal will impose significant cashflow constraints on taxpayers as they seek the resolution of a tax dispute before the courts.
- (ii) Requiring taxpayers to deposit 20% of these amounts will force some into borrowing or diverting available resources from income-generating uses.
- (iii) The proposal will also deny taxpayers who may lack the means to deposit 20% of the disputed tax an opportunity to appeal an unfavourable decision from the TAT. This would contravene the right of access to justice under Article 48. Furthermore, it is discriminatory as it assumes that the revenue authority has a stronger case/ higher likelihood of success.
- (iv) This proposal therefore usurps the role of the Court and denies the Court an opportunity to consider the merits of the submissions/ case made by the parties in determining the need for a deposit of any sums.
- (v) The provision does not define the refund process for the deposited funds.

The proposal may have the unintended effect of forcing taxpayers to pursue Alternative Dispute Resolution ("ADR") involuntarily.

Committee's observation

Clause 41

496. Delete Clause 41 because if enacted, the inserted Section 36 A (3) of the Excise Duty Act, will impose an administrative burden and potentially increase the cost of excise duty compliance for affected service providers where the CG requires taxpayers in a certain sector to remit excise duty within 24 hours. In addition, the wide discretion granted to the CG to expand the collection of excise duty within 24 hours to other sectors is ambiguous, ungoverned by any objective criteria, and, therefore, open to abuse. Further, if service providers are required to remit excise duty within 24 hours, there could be discrepancies between excise duty remitted to KRA and excise duty payable for a period. Cases of overpayment or underpayment of excise duty are likely to be common, and this will impose an additional administrative burden on both KRA and taxpayers in applying for and processing refund claims. Furthermore, where excise duty is underpaid due to changes in transactions after the remittance of excise duty, late payment interest and penalties will apply.

Committee's observation

Clause 43 (b)(viii)

497. The Clause be amended in two ways.

- (i) by deleting paragraph 6 of the Excise Duty Act and amending paragraph 4 of the 2nd Schedule to the Excise Act to read as follows: Excise duty on other fees charged by financial institutions and digital lenders shall be twenty percent of their excisable value or;
- (ii) by deleting paragraph 4 of the 2nd Schedule to the Excise Duty Act and amending Paragraph 6 of the 2nd Schedule to the Excise Act to read as follows: Excise duty on any amount charged in respect of lending by financial institutions and digital lenders at a rate of twenty percent.

498. The proposal, as currently drafted, creates a discriminatory practice that will have a detrimental effect on (i) the innovation of Fintechs in Kenya; (ii) Kenyan's access to affordable credit, noting that digital lending (whether through Fintechs or traditional lending facilities) serve at least 8 million citizens who cannot access the more formal or conventional forms of credit; and consistency in tax collection. The amendments will level the playing field, allowing those with the best products to thrive. Bringing clarity to the provision and how it applies to digital lenders and Financial Institutions who offer digital lending will enhance compliance with the levy and payment of excise duty and promote free-market economics in the field of credit creation. A free market in credit creation will allow the various products offered to customers in search of loans to survive based only on their suitability to the client's needs, customers will be able to choose loans based on ease of access, competitive interest rates and personalized service. All financial institutions (both traditional and digital lenders) will have the same cost of credit and will have to rely on innovation and customer satisfaction to thrive

Committee's observation

Clause 54(b)

499. Delete Clause 54(b) because this will create an administrative burden for taxpayers to meet this obligation due to the volume of invoices many withhold VAT on. The benefit to the customers will be what fair competition brings to the table better products, better service, and betterment of life.

Committee's observation

Clause 26(a)

500. Delete Clause 26(a). On the current reading of the proposal to paragraph 2 (b) of the Eighth Schedule of the Income Tax Act, CGT would also apply where a non-resident person who holds more than 20% of the share capital of a Kenyan company directly or indirectly disposes of their interest. The proposed amendments have not clarified who has the obligation to pay the CGT circumstances where a disposal is undertaken outside Kenya, as the liability could be imposed on the Kenyan entity in which the shares have been transferred or on the non-resident person who disposes of the shares in the offshore entity. We hope that further clarity will be provided in this regard.

Committee's observation

New Proposal

501. A proposal for the introduction of a proviso under Section 29(3) of the Excise Duty Act, 2015 to read as follows; Provided that in case of goods or services provided to individuals, the amount of excise duty relating to the goods or services whose payment has not been received upon expiry of 6 months after the provision of the goods or services may be offset against future excise duty payable in the subsequent tax period or refunded in accordance with this Section where the person elects for an actual refund.

1. Section 29(2) of the Excise Duty Act, 2015 provides that a licensed person who has accounted and paid for excise duty on excisable services and has not received any payments from the purchaser of such services may apply for a refund of the excise duty amount to the Commissioner of Domestic Taxes. The application for a refund should be made on the earlier of three years from the date of the sale of the services or the purchaser becoming legally insolvent.
2. The qualifying requirements under Section 29(2) of the EDA are very restrictive and may not accommodate small-value goods and services provided to individuals.
3. In the case of digital lending, fees charged on *unsecured* loans provided to individuals by digital lenders involve nominal amounts. In practice, the default rate of mobile loans can be high, and it may not be possible to recover the defaulted amounts after a period of 6 months even though the borrower has not been declared bankrupt. Excise duty is accounted for and paid to the Commissioner on or before the 20th day following the month when the loans are disbursed. In case of default, digital lenders would ideally be expected to recover the excise duty on defaulted loans by applying for a refund under Section 29 (2).
4. However, Section 29 (2) does not take into account the realities of the mobile lending business which makes it impractical for lenders to recover excise duty on defaulted loans. For instance, demonstrating legal insolvency for individuals may not be practical, considering the costs that may be involved versus the refundable excise duty amount. Further, the requirement to apply for refunds after 3 years of providing the service may not be prudent from a business perspective.

Committee's Observation

The Committee took note of the proposal but observed the proposal didn't go through public participation. Therefore, the proposal was rejected.

3.78 SKM AFRIKA LLP

Clause 2 (a)

502. Amend Clause 2 by deleting paragraph 2 (a) because the entire payout to a punter will be subjected to WHT at the rate of 20%. Under the current position, the 20% is applied only on the amount that is won over and above the stake upon winning and no tax is payable upon a lost bet. This change will have the effect of taxing the capital of the punter instead of the income of the punter which is contrary to the intention of income tax that seeks to tax gains or profits and not capital.

Committee Observations

The Committee adopted the proposal by amending the definition of 'winnings' to address the concern of the stakeholder and to align with the decision of the Tax Appeals Tribunal in *Commissioner of Domestic Taxes v Pevans East Africa Limited & 6 others* (Tax Appeal E003 of 2019 [2022] KEHC 10392 (KLR))

Clause 38

503. Delete Clause 38 because this makes it difficult for the government to react quickly to changes in economic circumstances including difficult times as was seen with the COVID-19 pandemic. Further, the provision does not provide that the Commissioner MUST make an adjustment but rather only serves to ensure that the government can make the changes as and when required to reflect the realities of the economy. Removing the powers effectively impairs the ability of the government to make and implement policy in relation to excise duty rates in situations where the same is required urgently without time to go through the legislative process.

Committee Observations

The amendment as contained in the Bill seeks to ensure predictability in the tax system. Therefore, the committee rejected their proposal.

The repealed Section was against the principle of certainty in Tax Administration

Clause 43 (b) (iv), (v), (vi), (vii)

504. Amend Clause 43 First Schedule Part II by deleting (b) (iv), (v), (vi), (vii) that increase excise duty for betting, gaming, lottery and price competitions Betting, gaming, lottery and price competitions. The proposed amendment by the Bill barely two years from when the excise duty was introduced in 2021 more than doubles the current rate of excise duty on betting, gaming, lottery and price competitions in the industry which is already heavily taxed and subject to numerous changes within a short period, making it highly unattractive for investors. At a time when many companies in this sector are closing

shop in Kenya, any proposal to increase taxes may have an overall negative implication of investors ceasing to invest in the sector.

Committee Observations

The Committee considered the proposal and agreed to reduce the rate from 20% to 12.5% because the increase was too steep within a short period.

3.79 MAK AND PARTNERS LLP /WANGUI MWANIKI/WANGUI KARUGA

Clause 36

505. Delete clause 36 because this proposal results in the arbitrary taking of property contrary to Article 40(2)(a) of the Constitution. Article 40 of the Constitution prohibits Parliament from implementing laws that will in any way interfere with a person's right to the enjoyment of property. During the period when 20% of the disputed tax has been deposited as security, a taxpayer will be unable to utilize the said funds either for the furtherance of its business or to put the funds to other users. Additionally, also hinders access to justice by taxpayers seeking legal recourse for disputed tax pursuant to Article 48 of the Constitution which provides for access to justice for all persons. The Firm submits that in the alternative a reduced rate of the disputed taxes be considered (e.g., 5% of the disputed taxes) and the security be deposited in the form of a bank guarantee or insurance bond rather than cash.

Committee Observation

The Committee observed that the requirement to deposit 20% of the disputed amount before filing an appeal to the High Court will reduce work capital for businesses and deny justice for taxpayers where they are unable to raise the amount. The Committee, therefore, recommends the Clause be deleted.

Clause 2(a)

506. Amend Clause 2(a) and insert the following new definition of 'winnings' to mean the "*positive difference between pay-outs made and stakes placed in a given month, for each player, as payable to punters by bookmakers licensed under the Betting, Lotteries and Gaming Act.*".

Committee Observation

The Committee adopted their proposal and recommends aligning the meaning as per the decision of the Tax Appeals Tribunal in Commissioner of Domestic Taxes v Pevans East Africa Limited & 6 others (Tax Appeal E003 of 2019 [2022] KEHC 10392 (KLR))

Clause 4

507. Amend the clause by deleting '*three years*' immediately after 'not more than; and replacing it with '*ten years*'

Committee Observation

Committee considered their proposal however, agreed to amend it to ‘not more than five years’ for the period that is sufficient for individuals to claim foreign exchange loss.

Clause 12

508. Delete clause 12 because the proposal is not practical since businesses incur a myriad of expenses, which are ordinarily deductible, but are not exempt transactions under the TPA for electronic tax invoice management system. These would include expenses from non-VAT registered suppliers and non-resident suppliers.

Committee Observation

The Committee rejected their proposal however, agreed to the commissioner to provide administrative guidelines to clarify the issues raised on the implementation of the system.

Clause 4

509. **Amend** clause 4 because it will adversely affect companies that depend largely on debt financing and more particularly companies undertaking huge capital-intensive projects such as manufacturing and infrastructure. Further, the proposal is unfair to taxpayers since foreign exchange losses are caused by macroeconomic factors which are beyond the taxpayers’ control and yet they are allowed business expenses when realized. In the alternative, MAK advocates submit that the committee should consider increasing the period from three years to a longer period such as ten years. This longer period allows the company to restructure its capital and extinguish the thin capitalization position.

Committee Observation

The Committee considered their proposal however, it extended the period to not more than five years. In addition, the proposal seeks to correct an error and refers to a company that limits the provision and does not cover other persons who are not a company. This discriminates against taxpayers who are not companies with regard to claiming foreign exchange losses.

Clause 24 (b)

510. Delete Clause 24 because the proposed increment of the individual tax rate is likely to drive high-earning individuals including expatriate employees and entrepreneurs to other countries with lower taxes. This will not only lead to a drain of skilled labour out of the country but will also counteract the Government’s efforts to make Kenya an attractive destination for international workers and individual investors.

Committee Observation

The Committee considered their proposal however; it was amended as follows to enable the government to raise revenue.

On the first KSh. 288,000 - 10%
On the next KSh.100,000 -25%
On the next KSh.5,612,000- 30%
On the next KSh. 3,600,000- 32.5%
On all income over KSh.9,600,000- 35%

Clause 28

511. Delete Clause 28 because increasing the rate of VAT on petroleum products from 8% to 16% will adversely affect the cost of living bearing in mind the already existing high inflationary conditions in Kenya. An increase in the price of petroleum products combined with the current economic downturn will lead to a decreased demand for ordinary goods and services, which will in turn have a negative impact on key sectors such as manufacturing, agriculture, retail, and trade and ultimately negatively affect tax revenues generated and remitted to the Government.

Committee Observation

The Committee rejected their proposal because the objective of the proposal is to harmonize the VAT rate and allow the normal market forces of supply-demand to operate

Clause 30(a)

512. Delete Clause 30(a) because this proposal is punitive to taxpayers seeking to claim input VAT credits considering they do not have control over the suppliers to ensure that they (suppliers) remit VAT charged to the taxpayers; nor do they have access to a supplier's ledgers to ensure that the supplier is accounting for the same to the Commissioner. This proposal further implies that the mandate of tax collection bestowed to the KRA under the law would now be shifted to the taxpayers to ensure that suppliers are compliant by remitting VAT deducted to the KRA. MAK submitted that taxpayers seeking to claim input VAT credits have properly discharged their duty of paying output VAT and providing corresponding information to the Commissioner to the effect that it had purchased from registered persons prior to claiming input tax. Accordingly, the taxpayer is legally entitled to claim input VAT.

Committee Observation

The Committee rejected their proposal for the proposal in Bill would disallow an individual from claiming input VAT twice.

Clause 41- Payment of Excise Duty within twenty-four hours

513. Delete because gives the Commissioner with arbitrary powers to require taxpayers in any other sector (except the betting and gaming sector) to remit Excise Duty collected on excisable services within twenty-four hours. Granting the Commissioner such discretion is placing the role of law makers to

make and amend legislation to the Commissioner, contrary to the powers vested upon the Commissioner under the Kenya Revenue Authority Act.

Committee Observation

The Committee considered the proposal, however, it noted that there is already a system in place

Clause 43-Increase in Excise Duty on Betting, Gaming, Prize Competition, & Lottery

514. Delete Clause 43 because the proposal to increase Excise Duty rates by 150% of the current rates is extremely punitive despite the desire by the Government to discourage irresponsible betting practices and also generate revenue for the Government. The proposed rate of excise duty is too high and may end up not achieving the intended revenue as most players will opt for international platforms for their betting activities instead of local betting sites. As it stands, the betting sector is already highly taxed and increasing excise duty on the amounts wagered or staked will drive punters to foreign betting sites effectively leading to loss of revenue to the Government.

Committee Observation

The Committee considered the proposal and agreed to reduce the rate from 20% to 12.5% because the increase was too steep within a short period of time.

Clause 59- Amendment of pleadings to include new grounds at the Tax Appeal Tribunal or Courts

515. Delete Clause 59 to remove the Court's discretion which is essential for taxpayers as it enables them to ask the Tribunal and or Court for leave to include grounds responding to issues that may have arisen in the objection decision or canvass further documentary evidence which may not have been previously available to a taxpayer. This proposal is contrary to taxpayers' right of being heard and may impede taxpayers' access to justice. In any event, there is no prejudice to be suffered by the Commissioner, as the Tribunal or Court will allow the Commissioner an opportunity to respond substantively to the new grounds.

Committee Observation

The Committee adopted the proposal by deleting the proposal in the Bill because the **proposal restricts the power of the court to admit new grounds of appeal depending on the circumstance and further takes away the inherent power of the courts to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court**

Clause 76

516. **Delete** Clause 76 or amend the provision to make the contributions voluntary because the proposal will also overburden employers with the increased cost of employment and may lead to loss of current employment or potential employment opportunities.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.80 ISEME, KAMAU COMPANY ADVOCATES

Clause 4

517. Delete Section 4A (a) (ii) subsection (1) ‘the foreign exchange loss shall be deferred (and not taken into account) and claimed over a period of not more than three years from the date the loss was realized by a company whose gross interest paid or payable to a non-resident person exceeds thirty per cent of the company’s earnings before interest, taxes, depreciation, and amortization in any year of income’ and substitute with Section 4A of the Income Tax Act is amended— (a)by deleting paragraph (ii) of the proviso to subsection (1) and substituting therefor the following new paragraph— (ii) the foreign exchange loss shall be deferred (and not taken into account) and claimed over a period of not more than three years from the date the loss was realized by a company whose gross interest paid or payable to a non-resident person exceeds thirty per cent of the company’s earnings before interest, taxes, depreciation, and amortization in any year of income; (b)by deleting subsection (1A). The current provision that is sought to be amended, provides that realized foreign exchange losses are to be deferred until such time that the company ceases to be highly geared. Under this provision, the company is not denied a deduction for legitimate business expenses

Committee Observation

The Committee rejected their proposal but it extended the period to not more than five years. In addition, the proposal seeks to correct an error and refers to a company that limits the provision and does not cover other persons who are not a company. This discriminates against taxpayers who are not companies with regard to claiming foreign exchange losses.

Clause 6

518. Delete Clause 6 until such time that a rate is provided for consideration and public participation.

Committee Observation

The Committee rejected the proposal because the proposal is in the Bill and went through public participation however, it was amended to include a 15% tax rate to align with the rate of the withholding tax applicable on dividends paid by a resident for equity and fairness.

Clause 30

519. Amend Clause 30 by deleting (a) in subsection (2), by deleting the word “or” appearing in paragraph (a) and substituting, therefore, the word “and”. This is an onerous and unreasonable requirement as

purchasers do not have any access or control over sellers' affairs. Accordingly seeking to punish the purchaser on account of the seller's failure to declare a return infringes the purchaser's right to property under Article 40 of the Constitution. The KRA is clothed with sufficient enforcement capabilities to ensure the seller declares and remits all taxes. There is no reason to impose an obligation on and punish the purchaser for a failure on the part of the seller and or KRA. The KRA is clothed with sufficient enforcement capabilities to ensure the seller declares and remits all taxes. There is no reason to impose an obligation on and punish the purchaser for a failure on the part of the seller and or KRA.

Committee Observations

The Committee considered the proposal however, it observed that the proposal in the Bill was to enhance compliance by sealing a loophole that has long been abused by unscrupulous taxpayers claiming fictitious input tax.

Clause 56

520. Delete Clause 56 because objection decision will often raise new issues which form new grounds that the taxpayer will need to raise on appeal to the Tax Appeals Tribunal. In addition, the proposal will prejudice taxpayers in tax disputes as they will be precluded from challenging the new issues arising from the objection decision. Further, it is in the interest of justice that tax disputes are determined based on the merits of the case instead of legal technicalities. This is in accordance with the principle of the overriding objective of justice under Article 159 (2) (d) of the Constitution. The Tribunal and the Courts should be allowed to exercise discretion on the issue of additional grounds. This proposal is also in conflict with the proposal under Section 35 of the Bill. Section 35 of the Bill proposes to amend the Tax Appeals Tribunal Act to allow taxpayers to produce documents and such other information as may be necessary for the Tribunal to make a decision.

Committee Observations

The Committee rejected the proposal to delete the Clause because taxpayers are allowed to elect for refunds or request for offset for existing or future tax liabilities

Clause 63

521. Delete Clause 63 because penalty and interest charges are quite punitive and often arise out of challenges faced by taxpayers, errors made by KRA including system challenges, and inadvertent failures to comply with procedural requirements among others. A framework for applying for a waiver of such penalties and interest charges is necessary to enable the KRA to release taxpayers from such burden where the situation merits. It is important to note that the waiver does not include the principal tax due. It only relates to penalties and interest charges which are often excessive even in instances of minor and inadvertent errors and omissions.

Committee observations

The Committee rejected the proposal to delete the clause because there is a need to remove the discretion in consideration for abandonment or remission of tax, waivers or penalties to provide equity and fairness in the treatment of taxpayers.

Clause 36

522. Amend Clause 36 by inserting the following proviso to subsection (1)- *Provided that where a party is not the Commissioner, that party shall before filing the appeal deposit with the Commissioner: i. an amount equivalent to twenty percent of the disputed tax or security equivalent to twenty percent of the disputed tax; or ii. an amount considered by the High Court to be just and reasonable.* The proposed amendment would violate litigants' constitutional right to access to justice as it places a barrier to a taxpayer accessing the High Court. Therefore, the organization proposes that to protect taxpayers' right of access to justice, the provision be retained but the High Court be granted discretion to determine the issue of whether or not a deposit must be made and will take into consideration the taxpayer's circumstances and capabilities to issue appropriate orders

Committee observations

The Committee considered their proposal however it observed that the requirement to deposit 20% of the disputed amount before filing an appeal to the High Court will reduce work capital for businesses and deny justice for taxpayers where they are unable to raise the amount. The committee, therefore, recommends the Clause be deleted.

3.81 LAWYERS HUB

Section 2

523. Amend Clause 2 (a) and Substitute with "*winnings*" to include net winnings after deducting the amount staked or waged. This will provide a more accurate reflection of the actual gain from betting, gaming, lottery, etc. This ensures fair taxation by taxing the actual profits rather than the total payout.

Committee Observations

The committee adopted their proposal and recommends aligning the meaning as per the decision of the Tax Appeals Tribunal in *Commissioner of Domestic Taxes v Pevans East Africa Limited & 6 others* (Tax Appeal E003 of 2019 [2022] KEHC 10392 (KLR))

New proposal Section 29

524. Introduce a threshold for VAT registration on imported digital services, such as setting a minimum revenue threshold. This ensures that smaller-scale service providers are not burdened with unnecessary compliance requirements, while still capturing tax revenue from larger digital service

providers and specifying clear guidelines on remittance deadlines to ensure consistency, transparency, and ease of compliance for taxpayers.

Committee Observation

The Committee considered the proposal but noted that the proposal did not go through public participation.

3.82 OLD MUTUAL

Clause 20(b) (C)

525. Amend Clause 20 (b) by deleting paragraph (3AB) because this will cause administrative strain due to the bulk nature of the transactions in the financial sector. Further, most corporates have lengthy approval processes for governance purposes.

Committee Observations

The Committee rejected their proposal but amended the time frame for remitting withholding rental income to five working days.

Clause 36

526. Delete Clause 36 because it is unconstitutional as it contravenes taxpayers' right to justice especially where the assessed amount in dispute is high. Further, the Commissioner is a counterparty in the dispute and should not be allowed to hold the deposit to discourage arbitrary assessments with a view of temporary revenue collection.

Committee Observations

The Committee observed that the requirement to deposit 20% of the disputed amount before filing an appeal on the High Court will reduce work capital for businesses and deny justice for taxpayers where they are unable to raise the amount. The Committee therefore adopted their proposal to delete the clause

Clause 52

527. Delete Clause 52 because it will lead to the registration of taxpayers' properties without them being provided an opportunity to contest the registration. This could potentially lead to a miscarriage of justice and rights.

Committee Observations

The Committee observed that the proposal poses a risk to the rights of taxpayers as it removes the requirement for the Commissioner to notify the taxpayer of the intention to register security against their

property. As a result, taxpayers would not be able to challenge the decision of the Commissioner before the security is registered. The committee therefore adopted their proposal to delete the clause.

New Proposal not in the bill

528. Amend Section 96A of the Stamp Duty Act to provide for Stamp duty exemption for Real Estate Investment Trusts (REITs). They submitted that REITs basically divide large properties into small units that can then be acquired by investors. This has the effect of eliminating capital barrier for investors who are interested in property. Also, Owners of large properties are also able to find buyers and reinvest the funds in similar taxable investments leading to more taxes in the medium term. Further, the extension/reintroduction of the stamp duty exemption will lead to be investments in real estate in line with the Government focus on participation in real estate.

Committee Observations

The Committee considered their proposal however, it observed that the proposal didn't go through public participation. Therefore, the committee rejected the proposal

3.83 BENSON ODIWUOR ADVOCATES

Clause 76

529. Delete Clause 76 because this encroaches upon the constitutional guarantee of freedom of property ownership, as stipulated in Article 40 of the Constitution of Kenya 2010. Further, Article 40 (1) (a) and (b) grants every person in Kenya the prerogative to exercise independent judgment in determining the type, quality, location, and timing of property ownership that aligns with their unique circumstances and aspirations.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 52

530. Delete clause 52 because it will not only violate the right to property but also undermine the principles of natural justice and due process. Further, by not notifying taxpayers before registering a security against their property, the Commissioner denies them the opportunity to respond to the claim or present evidence to challenge it.

Committee Observations

The committee observed that the proposal poses a risk to the rights of taxpayers as it removes the requirement for the Commissioner to notify the taxpayer of the intention to register a security against their property. As a result, taxpayers would not be able to challenge the decision of the Commissioner before the security is registered. The committee therefore adopted their proposal to delete the clause.

Clause 59

531. Delete clause 59 because it violates Articles 47,48 ,50 and 159 of the Constitution of Kenya 2010. Further, it limits taxpayers to the grounds contained in their objection during appeals to the Tribunal and the Courts, effectively eliminating the High Court's discretion to allow additional grounds to be introduced.

Committee Observations

The committee observed that the proposed amendment to the section is meant to ensure consistency since it has been noted that the section is abused by the taxpayers who conceal evidence from commissioner and only introduce same during appeal proceedings. The taxpayers should not conceal any information at the time of objection. Therefore, the committee rejected their proposal to delete the proposal

Clause 28 (a)

532. Delete clause 28 because the cost of transport, electricity, production, and basic food commodities will skyrocket and further incapacitate Kenyans in providing for their families.

Committee Observations

The committee observed that the objective of the proposal in the Bill is to harmonize the VAT rate and allow the normal market forces of supply and demand to operate. Therefore, the committee did not adopt their proposal to delete the Clause.

3.84 KENYA ECONOMIC YOUTH NETWORK

In a meeting with the Committee held on 21st May 2023, Kenya Economic Youth proposed the following amendments to the bill

Clause 38

533. Delete Clause 38 because removal of inflations adjustment will only benefit manufacturers, increase consumption of unhealthy goods because prices will decrease and could have negative health and economic effects. By keeping the adjustment, the consumption will be steady because these products' relative prices do not decrease.

Committee Observation

The committee observed that the proposal seeks to ensure predictability in the tax system and the repealed Section was against principle of certainty in Tax administration. Therefore, the committee rejected the proposal to delete the clause.

3.85 WATER BOTTLERS ASSOCIATION OF KENYA

Clause 36 (a)

534. Delete Clause 36 (a) because the deposit requirement may disproportionately affect taxpayers with lower income or limited financial resources. It creates a barrier to accessing the appeals process, potentially denying justice to those who cannot afford to pay the deposit. Further, requiring a deposit before filing an appeal could discourage taxpayers from pursuing legitimate appeals, even when they believe the tax decision is incorrect.

Committee Observations

The Committee observed that the requirement to deposit 20% of the disputed amount before filing an appeal on the High Court will reduce work capital for business and deny justice for taxpayers where they are unable to raise the amount. The committee therefore adopted their proposal to delete the clause

Clause 76

535. Delete Clause 76 because this approach is seen as coercion and limits individuals' options in choosing their housing plans.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

New Proposal Not in the Bill

536. Amend the First Schedule to the Excise Duty Act, 2015 to remove excise tax of KSh. 6.4 per litre. They submitted that the excise duty also known as SINTAX on bottled or similarly packaged waters should be abandoned and be rightly charged on Single Use Plastic PET as an excise tax on the packaging itself. It is the single use plastic that is detrimental to the Environment NOT the water. Further, collecting excise duty from a small number of manufacturers of packaging material is easier than collecting it from scattered traders of who pack or bottle water due to ease of tax administration.

Committee Observations

The committee considered the proposal, however noted that the proposal didn't go through public participation. Therefore, the committee rejected their proposal.

3.86 NAIROBI DISABILITY CAUCUS

Clause 36

537. Amend Clause 36 by deleting '*twenty percent*' and substitute thereof with '*ten percent*' because the low-income capacity necessitated by lack of employment opportunities, persons with disabilities will miss out on justice. Reducing the deposit amount to 10% could be a bit manageable.

Committee Observation

The committee noted the proposal by the stakeholder however it observed that the requirement to deposit 20% of the disputed amount before filing an appeal on the High Court will reduce work capital for business and deny justice for taxpayers where they are unable to raise the amount. Therefore, committee delete the proposal in the Bill.

Clause 76

538. Amend Clause 76 paragraph 31B (b) by deleting 'three per centum' and substituting with 'one per centum' because people with disabilities earn less compared to persons without disabilities.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.87 BLUE CROSS KENYA

Clause 38

539. Amend by deleting clause 38 because not adjusting for inflation means revenue loss in real terms to the government at a time when the government is struggling to raise revenue. Further, by keeping the adjustment, the consumption is held steady because these products' relative prices do not decrease.

Committee observation

The committee observed that the proposal seeks to ensure predictability in the tax system and the repealed Section was against principle of certainty in Tax administration. Therefore, the committee rejected the proposal to delete the clause.

3.88 AFRICAN WOMEN STUDIES UON

Clause 9

540. Delete Clause 9 because it raises the prices of domestically produced goods and services, putting local businesses at a competitive disadvantage in the global market. Further, Turnover taxation can have a cascading effect, with taxation imposed at each stage of production and distribution. This results in multiple layers of taxation and higher consumer prices. The tax burden is passed along the supply chain, affecting suppliers, manufacturers, retailers, and, ultimately, the purchasing power of consumers.

Committee observation

The Committee rejected the proposal to delete the clause but amended, the TOT thresholds as follows' "one million shillings but does not exceed twenty-five million shillings." At 3%.

Clause 20(b) (3AB)

541. Delete **Clause 20(b) (3AB)** because a 24-hour deadline for remitting the deducted rental income tax can present a number of challenges and burdens for taxpayers: Inadequate time for financial processing and fund transfer, particularly for those who must manage complex accounting systems or multiple transactions: Administrative capacity is stressed because taxpayers require adequate time for accurate tax calculation, documentation preparation, and completion of the remittance process.

Committee observation

The committee rejected their proposal but amended time frame for remitting withholding rental income to five working days

Clause 24 (b)(i)

542. Delete **Clause 24(b)(i)** because increasing taxes on employees earning more than KES 500,000 per month to shore up tax revenue may have a negligible impact on revenue due to the majority of employees earning below KES 100,000 per month. In the alternative, The National Assembly can introduce more bands to ensure equity like after 15%, 20%, 22.5%, 25%, 28%, 30%, Or an alternative of 20% flat tax without deductions.

Committee observation

Committee considered their proposal however; it amended as follows to enable government raise revenue.

On the first KSh. 288,000 - 10%

On the next KSh. 100,000 - 25%

On the next KSh. 5,612,000 - 30%

On the next KSh. 3,600,000 - 32.5%

On all income over KSh. 9,600,000 - 35%

Clause 33(xxx)

543. Delete clause 33 (xxx) because any input VAT incurred by LPG suppliers will become a cost that may be passed on to consumers, effectively negating the much-needed relief.

Committee observation

The committee observed that the proposed reclassification of inputs/raw materials for medicare manufacturing from zero rated to exempt is likely to have significant impacts on the health sector and the overall economy. Therefore, the committee adopted the proposal stakeholder proposal in the Bill.

Clause 36(a)

544. Delete clause 36 (a) (1) because proposal will create cashflow problems for firms that can't afford it. This proposal has previously been rejected due to its perceived punitive nature toward taxpayers.

Committee observation

The committee noted the proposal by the stakeholder however it observed that the requirement to deposit 20% of the disputed amount before filing an appeal on the High Court will reduce work capital for business and deny justice for taxpayers where they are unable to raise the amount. Therefore, committee deleted the proposal in the Bill.

Clause 43(b) (v)

545. Delete Clause 43(b) (v) because it will raise the price of sugar and limit its availability to households and low-income families.

Committee observation

Clause 43(b) (vi)

546. Delete Clause 43(b) (vi) that introduces excise tax on Human hair and other products of heading 6703; Wigs, false beards, eyebrows and eyelashes, switches and the like, and other products of heading 6704; and Artificial nails of tariff no. 3926.90.90. First, levying an excise on this kind of goods is incorrect because excise taxes (also known as sin taxes) are levied on goods with negative externalities to the society and taxes collected would therefore be used to correct a negative externality. In this case they are no negative externalities generated by these goods. Secondly, these goods proposed for taxation are sometimes used by women to correct effects of loss of hair due to medical conditions like after going through chemotherapy or other natural losses of hair from conditions like Alopecia areata. 2 Third, by proposing to levy a "sin tax" on this good, the National Treasury has committed an implicit bias against women by making an assumption that this a luxury good. The African Women Studies Centre, University of Nairobi Wee Hub requests the National Assembly to correct this misaligned view that wigs and human hair are luxury goods.

Committee observation

Clause 54(b)

547. Delete clause 54 (b) because the three-day timeline for remittance poses a compliance risk as it is exceptionally short. Taxpayers may find it challenging to meet this deadline, potentially leading to penalties or non-compliance issues.

Committee Observation

The committee considered the proposal however it amended the clause to allow remission of withheld tax within 5 working days because the proposed three days may pose significant compliance challenges.

3.89 CIVIL SOCIETY PARLIAMENT ENGAGEMENT NETWORK

Clause 12 (a) (c)

548. Delete clause 12 (a) (c) because most MSMEs and businesses are still grappling with the challenges of onboarding eTIMS.

Committee Observation

The Committee rejected their proposal however, agreed the commissioner to provide administrative guidelines to clarify on the issues raised on the implementation of the system.

Clause 24 (b) (i)

549. Delete clause 24 (b) (i) because the proposal will result in given the small number of Kenyans in the upper tax bracket.

Committee Observation

The Committee considered their proposal however; it amended as follows to enable government to raise revenue.

On the first KSh. 288,000 - 10%

On the next KSh.100,000 -25%

On the next KSh.5,612,000- 30%

On the next KSh. 3,600,000- 32.5%

On all income over KSh.9,600,000- 35%

Clause 28 (a)

550. Delete Clause 28 (a) because will the burden to the already burdened citizens, as the cost of living is already high. The recommendation is to therefore have it scrapped and look for alternative ways of broadening the tax base.

Committee observation

The committee rejected their proposal because the objective of the proposal is to harmonize the VAT rate and allow the normal market forces of supply-demand to operate

Clause 38

551. Delete clause 38 which seeks to repeal Section 10 of the Excise Duty Act, 2015. Removing the annual inflation adjustment, for instance for tobacco products, alcoholic beverages, and sugar-sweetened beverages could have negative health and economic effects and will only benefit manufacturers. Consumption of these products is directly linked to the growing burden of Non-Communicable Diseases (NCDs). Additionally, not adjusting for inflation means revenue loss in real terms to the government at a time when the government is struggling to raise revenue.

Committee observation

The Committee observed that the proposal seeks to ensure predictability in the tax system and the repealed Section was against the principle of certainty in Tax administration. Therefore, the committee rejected the proposal.

Clause 43 (b) (viii)

552. Delete Clause 43 (b) (viii) because the amendment will increase the cost of borrowing through digital platforms such as Tala, Branch among others.

Committee observation

The committee after observing the comments by stakeholders proposed to keep the current proposal in the Excise Duty Act and therefore proposes to delete the provision alluded to by the stakeholders.

Clause 36 (a)

553. Delete clause 36 (a) because this proposal could hamper access to justice especially where taxpayers are unable to pay in case of huge amounts in dispute. This will also be inconsistent with Articles 48, 50 and 159 of the Constitution of Kenya, 2010. Further, The provision of the Bill will be inconsistent with this ruling in the case of, Kamlesh Mansukhlal Pattni and Westmont Holdings v Central Bank of Kenya whereby the court held that security of costs payment should be reasonable and not subdue Access to Justice.

Committee observation

The Committee noted the proposal by the stakeholder however it observed that the requirement to deposit 20% of the disputed amount before filing an appeal to the High Court will reduce work capital for businesses and deny justice for taxpayers where they are unable to raise the amount. Therefore, Committee deleted the proposal in the Bill.

Clause 76

554. Delete clause 76 because the provision is vague as it is not clear on the nature of the deductions as they are referred to as compulsory deductions. There is also no clarity on accessibility of the deductions by the contributor. Further, there is also no prior report or framework on the usage of the contributions. This will be inconsistent with provisions of Article 10 of the Constitution of Kenya, 2010, specifically, good governance, integrity, transparency and accountability which are national values and principles binding to all state organs.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.90 SEN. OKIYA OMTATA

Clause 28

555. Delete clause 28 because increasing the cost of fuel will lead to an increase in the cost of living thus affecting various social economic rights

Committee Observation

The Committee rejected this proposal and noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clauses 33 and 34

556. Delete Clauses 33 and 34 of the Bill because they seek to change various zero rated commodities and place them as exempt, commodities such as agricultural pest control products, transportation of sugarcane, inputs/raw materials for fertilizer manufacturing, and fertilizers from zero rated to exempt will definitely have significant negative impacts on the agriculture sector and the overall economy.

Committee Observation

The committee considered the proposal and amended clauses 33 and 34 in order to keep the price of basic commodities low.

Clause 36

557. Delete Clause 36 of the Bill because it constitutes a threat to right to access justice and to fair hearing and the right to access to justice as guaranteed in the 2010 constitution

Committee Observation

The Committee considered the proposal and agreed with Sen. Omtata that the requirement for a 20% deposit is an affront to the constitution and especially the right to access to justice and right to fair hearing.

Clauses 78 and 79

558. Delete clauses 78 and 79 of the Bill because failure to update the statute the laws and statutory instruments is a threat to the powers of parliament.

Committee Observation

The Committee considered this proposal and agreed that there is constant need to update the statute book to keep laws up-to-date. Therefore, the committee deleted the proposal in the Bill

3.91 BRANFOOT ENTERPRISE

Clause 24 b (ix)

559. Amend Third Schedule Head B by deleting paragraph (b) because it poses a pronounced disadvantage to transport companies registered under the Companies Act. The proposed amendment seeks to ensure uniformity and fairness in tax management across all businesses, akin to the benefits other companies enjoy. By doing so, it would greatly support the cash flow of transport companies, particularly at a time when they are grappling with the potential impacts of the proposed fuel VAT increase, income tax increases for employees, and increased employer contributions. Given the widespread use of credit to manage cash flows, enforcing the payment of WHVAT within three days post-accrual of an expense could considerably strain the cash flows of companies, particularly transport companies. When combined with the obligation to pay advance taxes, this augmented strain on cash flows may lead to a sharp rise in the cost of transport, indirectly influencing the cost of living and overall inflation.

Committee observation

The committee observed that rate has been inexistence for too long and there is need to adjust the rate.

3.92 HAKI YETU

Clause 28

560. Delete Clause 28 bit will increase the cost of transport and the production of goods even higher. Kenyans are already struggling to survive the harsh economic times, with inflation hitting 9% in the past months. This increase will make the situation unbearable.

Committee Observations

The committee rejected their proposal because the objective of the proposal is to harmonize VAT rate and allow the normal market forces of supply demand to operate

Clause 43 b (viii)

561. Delete paragraph 3 & 6 in part II of the First Schedule of the Excise Duty Act 2015 that increases excise duty on mobile money transfer and digital lending fees because an increase in tax on digital lending fees is likely to be passed on to the consumers of digital loans, driving the cost of accessing loans higher. This proposal will deny many, much needed capital for business.

Committee Observations

The committee after observing the comments by stakeholders proposed to keep the current proposal in the Excise Duty Act and therefore proposes to delete the provision.

Clause 9 and Clause 24

562. Delete Clause 9 and 24(b) because is punitive and may drive many small businesses to evade tax. A graduated tax starting at 1% for those with a turnover between KES 0.5m to KES 5m would be reasonable.

Committee Observations

The committee rejected the proposal to delete the clause but amended the TOT thresholds as follows' "one million shillings but does not exceed twenty-five million shillings." at 3%. The reduction of the rate from 3% to 1% and variation of threshold was a COVID –19 containment measure which is proposed to be reviewed.

Clause 76

563. Delete Clause 76 because Kenyans are already contributing to different retirement schemes including the mandatory NSSF, while many others have already figured out their housing plans. At the very least, this should be made optional.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 24(b) (vii) (m)

564. Amend the Clause 24 (b)(vii) by deleting paragraph (m) because starters in this industry have to invest in expensive equipment and human resources to start making anything decent and thus the government should invest in protecting creators from cyberbullies.

Committee Observations

The committee considered the proposal however, it amended the proposal by reducing the rate from 3% to 1.5% and increasing the remittance period to the 20th of the following month after deduction to enable the construction and provision of affordable housing. The committee recommended that the clause shall become effective following operation of the regulations.

Committee Observations

Clause 43 (a) (vi) (human hair, Wigs and products of heading)

565. Amend the First Schedule in the second table of Paragraph 1 by deleting it because taxing beauty products is likely to push many young men and women out of business since the beauty industry has employed many people, who could be pushed out of business if people clients are no longer able to afford their services.

Committee Observations

The committee agreed with proposal to delete clause 43(a) paragraph (vi) to align with need to keep beauty products for women at an affordable level.

Clause 43 (b) (i)

566. Amend the First Schedule, Part II, Paragraph 3, by deleting because increasing excise duty on fees charged for money transfer services by cellular phone will push the cost of transferring money and in return make the cost of doing business higher. Furthermore, the government should be mindful of the fact that very few mobile money transactions are for profit making purposes.

Committee Observations

The committee agreed with proposal in the Bill because this aligns the rates of Excise Duty on money transfer by banks and other financial institution and the transfer of money through cellular phones

Clause 36 (a)

567. Amend Section 32 by deleting the proviso to Subsection 1 because the proposal is likely to bar some tax players from accessing justice especially where the amounts in dispute are significant, infringing on their right to access justice.

Committee Observations

The committee noted the proposal by the stakeholder and observed that the requirement to deposit 20% of the disputed amount before filing an appeal on the High Court will reduce work capital for business and deny justice for taxpayers where they are unable to raise the amount. Therefore, committee deleted the proposal in the Bill.

Clause 66

568. Amend Section 108A by deleting the proposal because this proposal is likely to limit the taxpayer's ability to seek a stay of proceedings.

Committee Observations

The committee adopted the proposal by the stakeholder to delete clause because it will lead to abuse of the court process and infringement of the rights of the taxpayers.

3.93 NATIONAL CEMENT SERVICES KENYA

Clause 68

569. Amend clause 68 to increase the levy from 10 per cent to 25 per cent and make it unalterable for at least 15 years to make Kenya import free and drastically reduce unemployment in the country. This is the only way that Kenya will develop its industries save jobs for Kenyans by promoting local industries and save the precious foreign exchange.

Committee's observation

The committee considered the proposal by the stakeholder to increase the export and investment levy for export and investment promotion levy is aimed at boosting local manufacturing, promote exports, promote value chain and create more jobs in the country by providing aggregation centres at the counties

3.94 SITITI CBO

Clause 38

570. Amend section 10 by retaining annual inflation adjustment for all tobacco products, alcoholic beverages and sugar-sweetened beverages because taxation measures can be an effective tool for alcohol control by influencing consumption patterns and discouraging excessive drinking.

Committee Observations

The committee **observed that the proposal seeks to ensure predictability in the tax system and the repealed Section was against principle of certainty in Tax administration. Therefore, the committee rejected their proposal.**

3.95 CATHERINE AMAYI

Clause 76

571. Amend Section 31B by deleting because the 3% housing levy is as an extra burden to taxpayers who are paying or contributing to other schemes like NSSF and NHIF.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 28

572. Amend Section 5(2) since increasing VAT from 8% to 16% will lead to increase in the price of all the commodities thus burdening the ordinary Kenyans even more.

Committee Observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. **The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal**

3.96 WANJIKU KIAMBU

Clause 28

573. Amend the clause by deleting Section 5(2) (aa) since the introduction of VAT at the rate of 16% on petroleum products will have a negative impact on the cost of living and cost of doing business in Kenya. Notably, the price of fuel has a direct impact on all sectors of the economy. Additionally, this proposal will also negatively affect Kenya's suitability of being an economic hub for direct foreign investments.

Committee Observation.

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal

Clause 76

574. Amend the clause by deleting Section 31B since contributions should be **voluntary**.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.97 HENRY ONYANGO, GIDEON MUINDE, ELISHA OWITI, KELVIN KAHUNGU, BEATRICE WANGUI ROBERT SASAKA, MWAI GACHUNGA, STEPHEN MUSYOKA

Clause 24(vii)(M)

575. They supported for the deletion of Clause 24(vii) (m). They urged the Government to stabilize the economy to create a great environment for unemployed Kenyan youths to create great content.

Committee's observation

The committee noted the submission by the stakeholder and effectively reduced the proposed the Excise Duty on Content Monetization from the proposed 15% to 5% and dropped the twenty four thousand threshold for sales promotion, advertising and Marketing to align it with digital content monetization -all of them at 5%

3.98 CPA KASIM KASUNANI, LEE KARIUKI, FANUEL ODIWUOR, DANIEL OSUMBA, JOSEPH OPIYO, EVANS DIMBUI, CECILIA WANGECHI, MARY AWUOR, LEONARD EKESE, GEOFFREY MOSOSI,

Clause 28

576. Delete of Clause 28 because Increasing VAT on petroleum will increase the cost of fuel. They were of the view that the government should balance.

Committee's observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal

3.99 GRAINE HURST

Clause 2

577. Amend the clause by deleting clause 2(a) as this provision would be a severe departure from international best practices. In order to create a well-regulated environment for gaming operators that is conducive to business and guarantees high revenue returns for the government of Kenya, it would be best to delete the proposed amendment.

Committee Observations

The committee considered their proposal however amended the proposal to align the meaning as per decision of the Tax Appeals Tribunal in Commissioner of Domestic Taxes v Pevans East Africa Limited & 6 others (Tax Appeal E003 of 2019 [2022] KEHC 10392 (KLR))

Clause 33

578. Amend clause 33 (b) (v) by deleting because if it is contrary to international VAT best practice and also the neighboring states apply sensible international best practice.

Committee Observations

The Committee observed that taxation of the export of services compared with that of goods is difficult and often when the exportation of services was zero-rated revenue losses arising from tax planning had been observed therefore the Committee agrees with the need to exempt the export of services which is what the Bill is doing. Currently, the export of services is taxed at 16% and therefore the proposal in Bill is more favorable to the export of services.

Clause 41

579. Amend the clause by deleting **it** because operators should be given a grace period to comply with the payment of excise duty.

Committee Observations

The Committee observed that the remittance of betting taxes within twenty-four hours had been tried and tested and was already working effectively. To this extent, the committee rejected the proposed amendments.

Clause 2(a)

580. Delete Clause 2(a) because passing on a turnover tax to the player, in combination with gross return-based player winnings tax, would push most customers to seek unlicensed, non-tax paying/tax collecting operators. This would hurt the progress that Kenya has made in weeding out non-compliant betting operators over the past two years.

Committee Observations

The Committee has a definition of winnings that excludes the staked amount and therefore largely agrees with stakeholder submission.

3.100 TITUS PARTSITAU

Clause 28

581. Amend clause 28 (a) by deleting it because an increase in this will create a ripple effect on other sectors resulting in a rise in inflation, a higher cost of living, and a disproportionate impact on low-income households.

Committee Observations

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 9

582. Amend clause 9 by deleting it to give businesses space to recover after the adverse effects of Covid-19, the Russian invasion of Ukraine and high inflation rates that have led Central Banks to hike interest rates which have in turn suppressed consumer demand.

Committee Observations

The Committee rejected the proposal to delete the clause but amended the TOT thresholds as follows' "one million shillings but does not exceed twenty-five million shillings." at 3%. The

reduction of the rate from 3% to 1% and variation of threshold was a COVID–19 containment measure which is proposed to be reviewed.

Clause 76

583. Amend clause 76 by deleting it because the contribution should be voluntarily and provide incentives for those willing to join. Furthermore, the matching contribution by employers/businesses will also have negative effects as businesses will freeze business investment commitments and reduce employment opportunities in the economy.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 36

584. Amend Clause 36 because it is unconstitutional and it hinders taxpayers' access to justice and right of appeal.

Committee Observations

The committee noted the proposal by the stakeholder however it observed that the requirement to deposit 20% of the disputed amount before filing an appeal to the High Court will reduce work capital for business and deny justice for taxpayers where they are unable to raise the amount. Therefore, the Committee deleted the proposal in the Bill.

Clause 10

585. Amend clause 10 by deleting it because the withholding tax rate is considerably high compared to the rate of 5% for services and assumes that digital content creators earn a profit margin of 50% or more therefore it will be advisable for the government to consider a lower rate.

Committee Observations

The committee considered the proposal however, it observed that the rationale for gross turnover at 3% is to make it easy for trading platforms to comply. If this was taxed at gain the Authority appreciates the difficulty that trading platforms would have to isolate gains made by millions of traders. Therefore, the committee rejected their proposal

3.101 MARIAM NAFULA AND OTHERS

Clause 9 and 24

586. Amend clauses 9 and 24 by deleting them because increasing the turnover tax rate without due consideration to small business operations' financial capacities could lead to adverse consequences such as reduced investment, job losses, and even business closures.

Committee Observations

The Committee rejected the proposal to delete the clause but amended the TOT thresholds as follows' "one million shillings but does not exceed twenty-five million shillings." at 3%. The reduction of the rate from 3% to 1% and variation of threshold was a COVID-19 containment measure which is proposed to be reviewed.

3.102 ERASTORS CHONGO

Clause 5 (a) (ii)

587. Amend clause 5 (a) (ii) by deleting paragraph (fa) because the proposal is ambiguous, as these club entrance and subscription fees are taxed under the employer's income.

Committee Observations

Clause 6

588. Amend clause 6 to specify the specific rate of tax applicable on these repatriated profits.

Committee Observations

The Committee adopted their proposal to include a 15% tax rate. This will be in alignment with the rate of the withholding tax applicable on dividends paid by a resident for equity and fairness.

Clause 9

589. Amend clause 9 since the amendment is against the manifesto of the government on 'inua mama mboga' through bottom-up initiative. In addition, MSMEs are the largest source of employment and their contribution to economic growth is significant.

Committee Observation

The Committee rejected the proposal to delete the clause but amended the TOT thresholds as follows' "one million shillings but does not exceed twenty-five million shillings." at 3%. The reduction of the

rate from 3% to 1% and variation of threshold was a COVID–19 containment measure which is proposed to be reviewed.

Clause 10

590. Amend clause 10 by deleting the clause since it is not realistic to cap the timelines to 24 hours especially considering that most of these facilitators are foreigners.

Committee Observations

The Committee observed that the proposal seeks to ensure predictability in the tax system and the repealed Section was against the principle of certainty in Tax administration. Therefore, the committee rejected their proposal.

Clause 12

591. Amend clause 12 (a) by clarifying which expenditures will be disallowed because some business costs are incurred outside the purview of the eTIMS system.

Committee Observations

The Committee made certain proposals on exemptions to the use of the ETIMS system where it will be inefficient to do so (e.g. Airline ticketing)

Clause 14

592. Amend clause 14 to define what constitutes the qualifying intellectual property and the preferential tax rate applicable.

Committee Observations

The qualifying intellectual property is defined in the formula and the preferential tax rate is equally defined under the specific or relevant preferential tax agreements

Clause 20 (c)

593. Amend Clause 20 by deleting (c) because this is not ideal, especially in the rental business and this will be largely affected by the inadequate cash flows especially in the case that accrual accounting is adopted by these rental agents.

Committee Observations

Clause 36

594. Delete Clause 36(a) because it will be a major hindrance to seeking tax dispute resolution. It will greatly interfere with the taxpayers' rights to access justice. Let the rule of law take charge without capping the financial threshold in the case of a tax dispute

Committee Observations

The Committee noted the proposal by the stakeholder however it observed that the requirement to deposit 20% of the disputed amount before filing an appeal to the High Court will reduce work capital for business and deny justice for taxpayers where they are unable to raise the amount. Therefore, Committee deleted the proposal in the Bill.

Clause 52

595. Amend Clause 52 (b) by deleting paragraph (2A) because it is an infringement on the rights of a taxpayer on notifying their intention to register their property as a security/collateral for unpaid taxes.

Committee Observations

3.103 EUGENE NGUMI

Clause 24

596. Delete amendment to the Third Schedule of the Income Tax Act (b) in Head B and Substitute with;
A 32.5% rate for incomes above 500,000 per month

A 35% rate for incomes above 700,000 per month

The amendment as it is will not raise significant revenue and therefore, a review will create room for more collection noting that there are only 12% of employees earning above 100,000 per month.

Committee Observation

The Committee considered their proposal however; it was amended as follows to enable the government to raise revenue.

On the first KSh. 288,000 - 10%

On the next KSh.100,000 -25%

On the next KSh.5,612,000- 30%

On the next KSh. 3,600,000- 32.5%

On all income over KSh.9,600,000- 35%

Clause 28

597. Delete Clause 28(a) because the increase in VAT from 8% to the maximum amount of 16% will make the cost of fuel higher and out of reach by consumers. This will further, have an inflationary effect on the price of other commodities. Consider incentivizing the importation of hybrid motor vehicles.

Committee Observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 36:

598. Delete 36(a) because it contradicts the constitutional provision of fair hearing and administrative action.

Committee Observation

The committee noted the proposal by the stakeholder however it observed that the requirement to deposit 20% of the disputed amount before filing an appeal to the High Court will reduce work capital for business and deny justice for taxpayers where they are unable to raise the amount. Therefore, the Committee deleted the proposal in the Bill.

Clause 76:

599. Delete Clause 76 because is misguided and will put pressure on salaried workers in addition to the current 6% NSSF deduction.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.104 NGIGE

Clause 36

600. Delete Clause 36(a) because the amendment fails to capture the imbalance of power between the government and litigants. It also places disproportional burdens on private persons and fails to factor in the time taken to resolve cases at the High Court. Further, the matter is also unconstitutional as it was determined that persons should not be required to pay security as a pre-requisite for justice in **Westmont Holdings SDN BHD v Central Bank of Kenya & 2 others** [Petition No. 16 (E023) of 2021]

Committee Observation

The Committee adopted the proposal to delete this clause, observing that the right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice. The high court has the discretion to determine the security once a matter is before the court.

Clause 76

601. Delete Clause 76 because is a high burden on the employee and employer who pay the levy. It also leads to double taxation at the point of saving and at the point of withdrawal.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.105 MAINA MUIGA, SIMON MBUGUA, MS OMOLO, MR WEKESA, MR. MWAI, MR. NAFTALY, MR. ROBERT, MS MUTHONI, DENNIS OMONDI, MR. NYAGA, MR. STEVE LEKISHON, MR. JOEL, LEONARD EKESE, MARY KOMU, JOYCE RUGURU

Clause 76

602. They supported the Housing Levy, noting that it will create jobs and improve their living standards.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.106 MATINDA ELIUD

Clause 78

603. Delete Clause 78 because any amendments to the SI Act, 2013, must be passed by the National Assembly and the Senate in accordance with Article 110 of the Constitution. Repealing the SI Act, 2013, as proposed would be a gross violation of the Constitution of Kenya. The people of Kenya are, including as enacted by Article 10[2], entitled to participate in coming up with statutory instruments that meet their aspirations.

Committee Observation

The Committee agreed with this proposal noting the importance of Parliament constantly reviewing the statute book. Additionally, the committee observed that any amendments to the

Statutory Instruments Act should come through Parliament (Committee on Delegated Legislation) not the Finance Bill.

3.107 JIMMA NJOROGÉ

Clause 36

604. Delete Clause 36(a) because it violates the Constitution. Legislation designed to fulfill one constitutional obligation should not invalidate another, for in doing so, it undermines the very fabric of the Constitution itself.

Committee Observation

The Committee adopted the proposal to delete this clause, observing that the right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice. The high court has the discretion to determine the security once a matter is before the court.

3.108 VICTOR ASIAGO MOMANYI

Clause 2 –definition of person

605. Delete clause 2 because the proposal seeks to expand the term person to an individual and certain persons related. This creates room for guaranteeing your relatives' taxes.

Committee Observations

The Committee deleted the provision noting that the definition of the word 'person' is already defined under the Tax Procedures Act, 2015.

Clause 6

606. Delete clause 6 because the proposal is punitive to taxpayers and will lead to double taxation and may affect the attractiveness of Kenya as a hub for multinationals. This provision will predominantly affect taxpayers who may be subject to transfer pricing adjustments arising from related party transactions. Such taxpayers will not be allowed a credit for withholding tax already paid against the transfer pricing adjustment.

Committee Observations

The Committee rejected the proposal to delete this clause and observed that the clause be amended to include a 15% tax rate. This will be in alignment with the rate of the withholding tax applicable on dividends paid by a resident for equity and fairness.

Clause 12

607. Delete Clause 12(a) because the proposal is discriminatory and unconstitutional. It is likely to disenfranchise small traders who may have the capacity for eTIMS VAT registration. Locking out the small enterprises on transacting business under the purview of not qualifying for VAT accreditation is detrimental to the economy at large.

Committee Observations

The Committee observed that the eTIMS system is in place and working. The Commissioner would provide administrative guidelines to clarify the issues raised on the implementation of the system.

Clause 24 (b) (vii)

608. Amend the Third Schedule (Head B) paragraph (m) to include a threshold/band of taxation, the proposal does not provide a threshold for taxable amounts implying that any income will be taxable regardless of the value earned. It would be right to address the threshold for taxable amounts for clarity and avoidance of ambiguity.

Committee Observations

The Committee considered the proposal, however, it amended it as follows:

500,000- 800,000 32.5% per month

Above 800,000 35% per month

This will enable the government to raise more revenue.

Clause 36

609. Delete Clause 36 (a) because it may bar some taxpayers from accessing justice especially where the amounts in dispute are significant. The 30-day timeline for a refund of the deposit paid for the appeal is laudable but with cautious skepticism. The Commissioner's track record of processing refunds promptly is ordinarily pegged on the availability of funds. The establishment of an interest-earning fund dedicated to holding security paid on appeal may be necessary to safeguard against redirection of the funds and to guarantee payment plus interest earned to taxpayers in instances where the High Court issues judgment in favor of the taxpayers.

Committee Observations

The Committee adopted the proposal to delete this clause, observing that the right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice. The high court has the discretion to determine the security once a matter is before the court.

Clause 53

610. Delete Clause 53 because it may however lead to uncertainty on the part of the taxpayer as they may be exposed to multiple amendments of assessments by KRA. Businesses thrive on predictable tax systems, this proposal in my view, works retrogressively on advancements of the same.

Committee Observations

The Committee rejected this proposal observing that it will not lead to uncertainty, but will help KRA in the recovery of tax dues.

Clause 66

611. Delete Clause 66 because it will limit the taxpayer's ability to seek a stay of proceedings. However, the proposed change shall be subject to the supervening rights guaranteed under Article 50 (2) (C) of the Constitution which guarantees taxpayers the right to adequate time to prepare and mount a defense. Taxpayers may still utilize this Constitutional provision to apply for and obtain a stay of proceedings where the Commissioner institutes concurrent suits against the same taxpayer over the same transaction.

Committee Observations

The Committee adopted the proposal to delete this clause noting that it limits a person's right to access justice thus it's unconstitutional.

3.109 DOMINIC RURIGA

Clause 10

612. Amend Section 12F by changing the proposed rate of the digital tax rate from 3% to 15% which is the current rate of gains. Gains in this case will be defined as the positive difference between the transfer value and the purchasing value (Transfer value – Purchase value). I further propose that the tax be remitted on or before the 20th of the following month after the transfer was made.

Committee Observations

The Committee observed that the rationale for imposing a low rate of tax at gross fair market value is to make it administratively possible for trading platforms to comply. The Committee understands the administrative difficulty that would be imposed on trading platforms if the tax was imposed on gains.

Clause 12

613. Delete Clause 12(a) because it lacks fairness since it will disenfranchise small traders who do not qualify for VAT registration. If this proposal is adopted, small traders (a category that forms the majority of businesses in Kenya) will be locked out of doing business with other businesses.

Committee Observations

The Committee rejected this proposal noting that the eTIMS system is in place and working. The Commissioner would provide administrative guidelines to clarify the issues raised on the implementation of the system.

Clause 28

614. Delete Clause 28 because it is ILLEGAL since it amounts to double taxation. Considering the high cost of petroleum products in the country, and the high tax rate on the same (about 50% of the value of petrol), I view this proposal as malicious to the livelihoods of Kenyans and the health of our businesses. Many Kenyans can't even believe that the treasury had the spine to allow such a proposal to find its way into the bill. It is further concerning when we look at how KRA calculates VAT on petroleum products. According to the Tax Laws Amendment Act, 2020 (TLAA), the taxable value of petroleum products is the consideration for the supply and includes any taxes, duties, levies and fees. This essentially means that KRA taxes VAT on the other taxes that are levied on the product.

Committee Observations

The Committee rejected the proposal and observed that the objective is to harmonize the VAT rate and allow the normal market forces of supply and demand to operate and offset the negative VAT refund position that KRA usually finds itself in.

Clause 36

615. Delete Clause 36 because it is punitive to taxpayers and is bad for the business environment. A requirement to deposit 20% of the tax in dispute before an appeal is filed presumes that the taxpayer is guilty before proven innocent which goes against a simple justice principle. This requirement is also likely to bar some taxpayers from accessing justice especially where the amounts in dispute are significant. Tax disputes usually take a very long time to be concluded, and this may disadvantage businesses since their capital is locked outside their operations. KRA has a reputation for demanding ridiculous and unrealistic amounts during a dispute. They have also been accused in the past of using the tax system to achieve objectives outside their mandate of tax collection. I see a loophole for abuse.

Committee Observations

The Committee adopted the proposal to delete this clause, observing that the right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice. The high court has the discretion to determine the security once a matter is before the court.

Clause 41

616. Delete Clause 41 paragraph 36A because the proposals go against two key principles of taxation: Cost-effectiveness and convenience. It is impractical, expensive and lacks basic logic. Such proposals pose the risk of making businesses divert their attention from running day-to-day operations to focus on meeting KRA deadlines. Worse still, they will be unable to do proper cash flow management for their businesses as they seek to meet this unrealistic law. I believe this proposal will increase Non-compliance and bring an Unconducive business environment

Committee Observations

This Proposal was rejected by the Committee. The Committee observed that the remittance of betting taxes within twenty-four hours had been tried and tested and was already working effectively.

Clause 76

617. Delete Clause 76 because the timing of this proposal is terrible. When combined with the proposed changes in NHIF and the recent changes in NSSF contributions, the impact on employees will be severe, especially at a time when many are grappling with the high cost of living. Employers will also react by freezing employment, cutting wages, or worse, laying off employees. It is also bad economics to force savings on citizens when tax rates are rising and incomes declining (KNBS reported a decline in incomes in 2022). It will worsen the unemployment rate and lead to more poverty. Then you'll have no one to live in your house. The decision of owning a home is very personal and should not be subjected to the dictatorship of any regime. Many Kenyans already have their homes, others have made plans that they are executing, and others just don't want to own a home. Making it mandatory is robbing them of their freedom of choice. At worst, the scheme should therefore be voluntary.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.110 RAI CEMENT LTD

Clause 68

618. Delete Clause because the proposed imposition of the export and investment levy to 10% and import duty at 10% will have trade re-direction in favor of Egypt which exports 67% duty-free clinker to Kenya. Cement manufacturers will be forced to close down leading loss of revenue for the government and individuals will lose jobs. The levy will have a negative impact on the government's agenda of the Affordable Housing plan.

Committee Observation

The Committee rejected this proposal observing that the introduction of the export and investment promotion levy is aimed at boosting local manufacturing, promote exports, promote the value chain and create more jobs in the country by providing aggregation centers in the counties.

3.111 KENYA NATIONAL UNION OF NURSES

Clause 24 (b)

619. Delete Clause 24(b) because the proposal is discriminatory against the group of income earners earning above Ksh500,000 per month and who already are paying hefty amounts in newly adjusted NSSF and NHIF rates.

Committee Observation

The Committee considered the proposal; however, it amended it as follows:

KSh500,000- 800,000 32.5% per month

Above 800,000 35% per month

This will enable the government to raise more revenue.

Clause 33 (xxx)

620. Amend by deleting Clause 33 (xxx) because taxing Pharmaceutical raw materials will subsequently make affordable health care unachievable. Retain as Zero-Rated.

Committee Observation

The Committee agreed with the proposal noting that there is a need to make health-related products affordable.

Clause 34 (iv)

621. Delete Clause 34 (iv) because the suggestion of removal of maize flour and sugar from the zero-rated list will see prices skyrocket raising the cost of living.

Committee Observation

The Committee agreed with this proposal to retain this paragraph in the schedule of zero-rated items.

Clause 36

622. Delete Clause 36 because the proposal shall deny justice to an aggrieved person and access to justice is provided for in the constitution of Kenya in article 48.

Committee Observation

The Committee agreed with the proposal, noting that the requirement to deposit 20% before appealing impugns a taxpayer's right to access justice

Clause 76

623. Delete Clause 76 because affordable housing is already provided for in public servants' pension schemes like LAPFUND, Superannuation scheme, etc. No guarantee of owning a home as ownership is on qualification and there are grounds for qualification have not been specified. Employees are grappling with the effects of the high cost of living given the increase in NHIF to 2.75%, 6% increase in NSSF, 8% increase in fuel levy and 40% increase in electricity. A further 3% increase will negatively impact the economy.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 82

624. Delete Clause 82 because the proposal is discriminatory to the male child. The unmarried female child is already catered to; however, their age limit is not indicated.

Committee Observation

The Committee observed that this provision is not discriminatory because it only seeks to facilitate the provision of pension benefits to officers appointed by the Government to public offices and are not in mainstream civil service. The persons to qualify for the benefits must meet the requirements under the Act

3.112 EDWIN OMARI

625. Delete Clause 76 because some individuals already own a house built through loans from SACCOs and no research has been done to conclude whether Kenyans need houses at this time.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.113 ANDREW KIOKO

Clause 76

626. Delete Clause 76 because most teachers already own houses through Mwalimu SACCO and most leave from hand to mouth from the net salary.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.114 DANIEL KINUTHIA MWANGI

Clause 76

627. Delete clause 76 because it places the financial burden on low-income earners and restricts individuals' ability to allocate their income according to their priorities and circumstances. He made the following proposal:

- i. Retain the voluntary contribution to the National Housing Development Fund of 1.5% on basic salary to both employees and employers.
- ii. Increase Excise Duty on phone users with increment meant for National Housing Development Fund.

- iii. Increase VAT to 18% with an increment meant for National Housing Development Fund.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.115 KENYA FLOWER COUNCIL

Clause 33

628. Delete clause 33 (ii) paragraph 148 because it seeks relates to VAT Exemption on agricultural inputs (chemicals & fertilizers). Exempt supplies increase the cost of production. A taxpayer can claim input tax on zero-rated supplies. Companies will not be able to claim exempt inputs on refund, lowering the funds that are back by KRA to facilitate operational costs. The Firm proposes that the same is retained at a zero rate.

Committee Observations

The Committee adopted the proposal observing that there is a need to retain inputs and raw materials supplied to manufacturers of agricultural products.

Clause 17

629. The Bill proposes to tax the entire business income of a member's club and a trade association, excluding joining fees, welfare contributions and subscriptions. In light of the proposal, all income made by a member's club and a trade association will be deemed as business income and subject to income tax. The firm proposes the rejection of this clause given that it will impact the trade associations' operational costs which will trickle down to members thus increasing their subscription fees and acting as a disincentive to members to join.

Committee Observation

The Committee rejected this proposal because member clubs and trade associations are carrying on business as other taxpayers and in the same environment and it is therefore discriminatory not to tax income from their businesses.

Clause 43

630. The Bill proposes a 25% excise duty on Imported Test liner paper (HS Code 4805.24.00) and Imported Fluting paper (HS Code 4805.19.00). The Firm calls for a half in the implementation of this duty and revert to the status quo since these HS codes already have a 25% duty on them currently to protect

the local mills, and with an additional 25% excise duty to be implemented, this will be detrimental to many industries due to higher costs being passed on.

Committee Observation

The Committee considered the proposal and consequently amended the clause to read imported non-virgin test liner paper

Clause 68

631. Under this clause, the Bill proposes a 10% levy on Exports and Investment Promotion. The opinion of the Firm is that this imposition will lead to double taxation by 2 ministries (the Ministry of Agriculture and the Ministry of Trade). It is further noted that the Horticultural Crop Directorate (HCD) has been charging a 0.25% export levy based on free-on-board (f.o.b.) value.

Committee Observation

The Committee observed that there is a need to introduce the export and investment promotion levy to boost local manufacturing, promote exports, promote the value chain and create more jobs in the country by providing aggregation centers in the counties.

Clause 24 (b) (i)

632. The clause proposes a 35% PAYE on anyone with a salary beyond Kes 500,000. The institution proposes the retention of the tax rate as this will affect those earning more than Kes 500,000, thus reducing their disposable income. Further, it will discourage individuals with specific expert knowledge from working locally due to high taxation.

Committee Observation

The Committee considered the proposal; however, it amended as follows:

500,000- 800,000 32.5% per month

Above 800,000 35% per month

This will enable government raise more revenue.

Clause 76

633. The clause seeks to impose a 3% of an employee's monthly basic pay, matched up with 3% from the employer up to a maximum of Kes 5,000. It is the opinion of the Firm that whilst the proposal is good for the employee, its practicability is doubtful as the contributions are not adequate to afford a house. Further, the levy should be made voluntary and not compulsory. The compulsory levy will increase the cost of production for the employer as they have to match what the employee contributes. It is also noted that workers will also be taking home a lower disposable income which will make it hard for them to make ends meet.

Committee Observation

Clause 2

634. Delete the clause because the definition of person does not take into account situations where a third party participates directly or indirectly in the management, control or capital of both entities.

Committee Observation

The Committee deleted the clause because the definition of 'person' is provided for in the Tax Procedure Act.

Clause 14

635. Delete Clause 14 because it may adversely affect our members who do research and patenting of products.

Committee Observation

The Committee observed that this proposal is meant to incentivize innovation and research by creating a preferential tax regime. The formula is meant to determine the income that will be subject to a preferential tax rate and not provide a special tax rate. Referencing is amended from subsection (4) to subsection (3) because there is no subsection (3) in the Act.

Clause 12 (a)

636. The bill seeks to move an amendment on the non-deductibility of invoices not generated through E-TIMS. It is the opinion of the Council that since no VAT is claimed on such invoices, these should continue being deductible expenses for the purposes of income tax computation.

Committee Observation

The Committee observed that the eTIMS system is in place and working. The Commissioner would provide administrative guidelines to clarify on the issues raised on the implementation of the system.

Clause 28 (a)

637. The bill proposes to delete the 8% rate on petroleum products. The Firm recommends that the rate be maintained at 8% given that this will result in higher transportation costs for goods and services and thus increase the cost of production which will adversely impact foreign exchange.

Committee Observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 57

638. The proposal seeks to remove future requests for waivers on penalties and interest on tax liabilities. The Kenya Flower Council recommends that companies should request waivers on a case-to-case basis. The effect of the new proposal under the Bill will cause a strain on the company's cashflows where penalties and interests have accumulated due to hard economic times in running the business.

Committee Observation

The Committee observed that the proposed amendment to Section 51 of TPA is meant to allow a taxpayer who has objected to providing the information requested by the Commissioner.

Clause 57

639. Seeks to amend clause 57(a) of the Bill. They are of the view that issuing the taxpayers only 7 days to submit information requested on notice to KRA is unfair considering the kind of information requested is voluminous. It is the opinion of the Kenya Flower Council that KRA officials should use documents that had been requested during their audit.

Committee Observation

The Committee observed that the proposed amendment to Section 51 of TPA is meant to allow a taxpayer who has objected to providing the information requested by the Commissioner.

Clause 36

640. They recommend that this proposed amendment be deleted in its entirety since it is impossible to get this 20% security from the little available working capital and further have the amount held by KRA 30 days after the appeal has been determined before it is refunded to the farm.

Committee Observation

The Committee adopted the proposal to delete this clause, observing that the right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice. The high court has the discretion to determine the security once a matter is before the court.

Clause 23 (c)

641. The proposal seeks to extend the claim of investment allowance at a rate of 100% to hotel buildings, buildings and machinery used for manufacture which are located outside Nairobi and Mombasa. It is the opinion of the Firm that this creates a good business environment to attract FDI. It is worth noting that companies in sectors such as agriculture or mining may no longer be in a position to access the accelerated investment allowance should this proposal be enacted. Furthermore, the proposal may Disincentivize investors, especially in the infrastructure space, where projects, due to their nature, can only be located outside the counties of Nairobi and Mombasa.

Committee Observation

The Committee agreed on the need to delete clause 23(c) noting that individuals can invest in any part of the country and qualify for the investment deduction (avoids discrimination)

3.116 KIGAME MEDIA, PERSONS LIVING WITH DISABILITY & JENGA MKENYA MOVEMENT

Clause 2

642. Amend Clause 2 because taxing the entire winnings without deducting the amount staked creates an inequitable and burdensome situation for individuals engaged in betting, gaming and lotteries. The proposal will discourage participation in such activities.

Committee Observation

The Committee agreed with the stakeholder on the definition of “winnings” to mean the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act excluding the amount staked or wagered in that particular transaction

643. Further, the clause proposes to expand the scope of the word “person” in the taxation of related individuals. Taxation that relies on a person’s family’s income violates the principles of individual taxes and infringes upon privacy rights.

Committee Observation

The Committee deleted the definition of “person” as proposed in the Bill.

Clause 4

644. Delete Clause 4 because the restriction on interest expense deduction for foreign loans, while excluding local loans creates an unfair advantage for foreign lenders and discourages local borrowing. Further, this will undermine the development of the local financial sector and hampers the ability of businesses to invest and create jobs.

Committee Observation

The Committee rejected the deletion. However, the Committee amended the period of claiming foreign exchange losses from 3 years to 5 years as the increased period would be enough time for claiming foreign exchange losses.

Clause 9

645. Amend Clause 9 because the proposal seeks to net more revenue from Medium-sized businesses by adding them to the corporate income tax ambit; however, it might lead to non-compliance.

Committee Observation

The committee agreed with the proposal to amend the clause and therefore amended it, such that the turnover tax thresholds changed to “one million shillings but does not exceed twenty-five million shillings.” The Rate was retained as proposed in the Bill at 3%

Clause 24 (b)(i)

646. Delete Clause 24(b)(i) because the proposal may deter high-income earners, diminish their disposal income and impede economic progress.

Committee Observation

The Committee considered the proposal; however, it amended it as follows:

KSh500,000- 800,000 ~~32.5%~~ per month

Above 800,000 ~~35%~~ per month

This will enable the government to raise more revenue.

Clause 24(b)(vii)

647. Delete Clause 24(b)(vii) because taxation may stifle innovation and discourage the production of valuable online content impeding progress in the sector.

Committee Observation

The Committee considered this proposal and resolved to amend it to reduce the rate of tax from 15% to ~~3%~~ to encourage and incentivize the youth.

3.117 MEDIA OWNERS ASSOCIATION OF KENYA

Clause 2

648. Delete Clause 2(b) because the proposed tax on advertisements payments to advertising companies, most of whom are small and medium enterprises, translates to less cashflows which in turn limits their working capital. In addition, there is need to give room for the industry to achieve its growth potential before introducing taxation.

Committee Observations

The Committee agreed with the stakeholder on the definition of “winnings” to mean the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act excluding the amount staked or wagered in that particular transaction.”

Clause 2 (b)

649. Delete clause 2(b) because it introduces a tax on digital content monetization to give room for the industry to achieve its growth potential. Alternatively, amend the clause to lower the proposed tax rate from 15% to 5% to match the withholding tax rate applicable to other professional services.

Committee Observations

The Committee considered and agreed with the proposal to lower the tax rate to 3% to incentivize content creators and encourage the sector to grow.

Clause 12(a)

650. Delete clause 12(a) because most people in the informal sector have little or no knowledge of operating the Electronic Tax Invoice management system gadgets and this means, to comply, they will need the assistance of an agent thus increasing the cost of doing business.

Committee Observations.

The Committee considered but rejected the proposal noting that there is a need to digitize the system to enhance compliance. Additionally, the committee noted the eTIMS system is in place and working. The Commissioner would provide administrative guidelines to clarify on the issues raised on the implementation of the system.

Clause 36

651. Delete the clause entirely because the clause contravenes Article 48 of the Constitution which states that all persons have a right to access justice and therefore, requiring a taxpayer to put up a deposit to access an appeal mechanism limits the right to access justice. They are of the view that deposit requirements would discourage potential investors from setting up in Kenya, and this will negatively affect foreign direct investments.

Committee Observations

The Committee adopted the proposal to delete this clause, observing that the right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice. The high court has the discretion to determine the security once a matter is before the court.

Clause 43(b)(x).

652. Delete the entire clause because advertisements relating to alcohol and betting/gaming are already regulated in as far as the billboard or other printed material sizes and airing times are concerned. Excise Duty on advertisements will result in double taxation since alcohol and betting/gaming suffer significant excise duty.

Committee Observation.

This proposal was rejected as the committee observed to discourage advertisement of harmful content related to alcoholic beverages and gambling

Clause 24 (b)

653. Delete Clause 24(b) because the 35% tax rate is too high and will have a negative impact on the society as income levels are reduced which will eventually lead to a decrease in savings and investments in the economy. In addition, expatriates who might bring in expertise and knowledge will be discouraged from working in Kenya.

Committee Observations

The Committee considered the proposal; however, it amended it as follows:

500,000- 800,000 32.5% per month

Above 800,000 35% per month

This will enable the government to raise more revenue.

Clause 76.

654. Delete the proposal or make the contribution optional for employees and relieve employers from the obligation to contribute. Because those formally employed contribute to NHIF and NSSF, the housing levy will be an extra burden leading to reduced take-home pay which in turn translates to less savings and investment.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.118 CPF FINANCIAL SERVICES

Clause 76

655. Amend Clause 76 to provide an allowable deduction on the 3% contribution to the Housing fund levy to compute the taxable income to incentivize employers in participating. Employee contributions should be tax exempt and at the point of withdrawal shall also be exempted. Further, they propose NHDF be run by a Board of Trustees with a similar governance structure as pension schemes under Retirement Benefits Scheme (RBA). Also, the fund should allow additional voluntary contributions above Kes 5,000 for employees to meet guaranteed target savings to qualify for houses.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.119 SGA HOLDINGS

Clause 20 (c)

656. Delete clause 20(c) because the change is expected to pose considerable compliance difficulties for taxpayers, as they often seek professional advice to determine the applicability of withholding tax and how to properly account for it. Requiring taxpayers to obtain such advice and complete the necessary administrative tasks within 24 hours places an unjust burden on them, particularly their already burdened accounting and finance departments.

Committee Observation

The Committee considered this proposal and amended the clause to allow remittance to be done within five (5) working days.

Clause 4 (a) (ii)

657. Amend clause 4(a) (ii) to increase the period from the proposed three years to ten years because this proposal is unfair to taxpayers as foreign exchange losses are caused by macroeconomic factors which are beyond the taxpayers' control. Additionally, this proposal will impose a huge administrative burden on the part of taxpayers as companies will need to track foreign exchange losses per year of income as they get realized.

Committee Observation

The committee observed that the proposal in the Bill indeed allows the deduction of foreign exchange losses but limits the period to which this can be done to three years to protect revenue. The proposal was amended to extend the period from three to five years.

Clause 24 (b) (ix)

658. Delete Clause 24(b) (ix) because the increase in advance tax on commercial vehicles compounds the misery of businesses as this increases their cost of doing business. As much as the advance tax is treated as a tax credit; it will have a very heavy impact on taxpayers in the Private Security sector such as SGA from a cash flow perspective.

Committee Observation

The Committee observed that the rate has not been revised in a long time and there is a need to adjust the rate.

Clause 12

659. Amend clause 12 to suspend the implementation/ application of this clause because this will cause significant challenges for consumers since the e-TIMS is not yet fully integrated and may cause significant challenges.

Committee Observation

The Committee rejected the proposal noting that the e-TIMS system is in place and working. The Commissioner would provide administrative guidelines to clarify on the issues raised on the implementation of the system.

Clause 24 (b) (i)

660. Delete Clause 24(b) (i) because there may be a loss of skilled labor from the country, undermining the Government's efforts to attract international workers and individual investors to Kenya. Therefore, PAYE should be retained within the current rates.

Committee observation

The Committee considered the proposal; however, it amended as follows:

500,000- 800,000 32.5% per month

Above 800,000 35% per month

This will enable government raise more revenue.

Clause 76

661. Delete Clause 76 because it will overburden employers with the increased cost of employment and may lead to loss of current employment or potential employment opportunities.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 36

662. Delete Clause 36 because it could create certain disincentives within the dispute resolution process. It might encourage the Kenya Revenue Authority (KRA) to raise inflated assessments, aiming to collect 20% of such assessments when they win a case at the Tax Appeals Tribunal (TAT). Additionally, it grants the KRA significant leverage in alternative dispute resolution, as taxpayers may feel intimidated to settle cases rather than pursue the litigation process. Therefore, SGA requests to have this proposal expunged altogether.

Committee observation

The Committee adopted the proposal to delete this clause, observing that the right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice. The high court has the discretion to determine the security once a matter is before the court.

Clause 28 (a)

663. Delete the clause and retain the current rate of VAT at 8% because the increase will have a significant adverse effect on the already high cost of living. t Additionally, private security companies such as SGA are highly dependent on Motor vehicles in their courier, alarm & response and guarding arms and thus an increase in the cost of fuel would make them incur higher operational costs that they cannot recoup from customers on the backdrop of slow growth in the economy. It is based on the above scenarios that SGA requests the Committee to zero-rate VAT on fuel to help us reduce our operating cost base.

Committee Observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 31

664. Delete Clauses 31 because they will create a burdensome condition for taxpayers and contradicts the fundamental principle of simplicity in an effective tax system. Furthermore, it undermines the compliance efficiency that the Kenya Revenue Authority (KRA) had promised to achieve through the introduction of real-time VAT reporting via TIMS and e-TIMS. SGA, therefore, requests the National Assembly to stay the enactment of this proposal until a time when we will have a fully integrated and seamless e-TIMS.

Committee Observation

The committee rejected this proposal noting that the clauses do not complicate the tax system. The proposal is intended to enhance tax compliance.

3.120 COCA COLA

Clauses 9 and 24

665. Delete Clauses 9 and 24 of the Bill to retain the current rate of Turnover tax and the band. Retaining the current threshold and will cushion low-income businesses from excessive taxation hence increasing their disposable income and propensity to save and reinvest in their businesses. In addition, Retaining the current rate of turnover tax and the threshold, will provide a stable trading environment to SMEs.

Committee Observation

The Committee considered the proposal however, the Committee amended the Turnover Tax thresholds changed to “one million shillings but does not exceed twenty-five million shillings.” The rate was retained at 3%.

Clause 20

666. Delete clause 20(3) (AB) because it will lead to an increased compliance burden if withholding tax is remitted within 24 hours

Committee Observations

The Committee observed that there might be administrative burdens in ensuring compliance and consequently amended the timeframe from 24 hours to 5 working days.

Clause 36

667. Delete Clause 36 because it will potentially create a barrier to appeal as it limits taxpayers' access to justice and their right of appeal. Payment of deposits ties up the working capital of companies, hence affecting cashflows. To require a 20% deposit of the disputed tax before the determination of the dispute by the courts presupposes that the said taxes are, in fact, due and payable. The clause puts the KRA in a powerful bargaining position and taxpayers may be intimidated to settle cases rather than pursue a lengthy litigation process that may tie up significant funds for an extended period.

Committee Observations

The Committee agreed to adopt the proposal, noting that the imposition of 20% of the amount in dispute will hinder access to justice for many taxpayers. The clause is deleted.

3.121 PARLIAMENTARY SERVICE COMMISSION

Clause 5 (b)

668. The Parliamentary Service Commission supports the amendment, this is to clarify that payments paid to a public officer wholly for the performance of official duties should not be taxed.

3.122 ASSOCIATION OF START-UPS AND SME ENABLERS

Clause 9

669. Amend the proposal by deletion of words “does not exceed or is not expected to exceed fifty million shillings” and substituting therefor “does not exceed or is not expected to exceed fifteen million shillings and also deletion the word “one” and substituting therefore the word “one point five”; in paragraph 9. This will caution micro-enterprises and hustlers from the high cost of doing business as well as increase survival and growth opportunities.

Committee Observation

This proposal was rejected as the committee observed discouraging advertisements of harmful content related to alcoholic beverages and gambling.

Clause 14

670. Amend the proposal by including a preferential tax rate of 5%. Currently, the Bill does not define the preferential tax rate that will apply to the income from Intellectual Property.

Committee Observation

The Committee observed that the rate applicable is the rate payable by companies operating in a preferential tax regime. The formula is meant to determine the income that will be subject to a preferential tax rate and not provide a special tax rate.

Clause 43 (a) (vi)

671. Amend the proposal by inserting new items at the end of the second table appearing in paragraph 1. Imported cellular phones 2%. This will enable many Kenyans to afford a mobile phone which is a tool for trade as well as communication.

Committee Observation

The Committee rejected the proposal to amend citing the need to promote local manufacture of phones. The Committee made amendments to incentivize local manufacture of phones.

Clause 43 (b) (viii)

672. Delete clause 43 (b) (viii) because this may lead to an increase in the cost of borrowing from digital lenders. The proposal may also be discriminative compared to provisions of the traditional lending options where the interest charged and other returns on loan are exempted from Excise Duty.

Committee observation

The Committee considered the submission and deleted the provision.

Clause 76

673. Delete clause 76 because the introduction of additional deductions from employee pay will reduce the purchasing power of the employees. This provision will also burden employers with increased costs of employment and is likely to reduce job creation or job opportunities.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 24 b (vii)

674. Amend Clause 24 (b)(vii) (m) on digital content monetization by applying a taxation rate of 5% as opposed to the proposed 15% because it will be discriminatory to content creators.

Committee observation

The Committee agreed with the proposal to lower the proposed rate of tax to 5%.

3.123 WEBTRIBE LTD

In a meeting with the Committee held on 21st May 2023, Web Tribe Ltd proposed the following amendments to the Bill.

Clause 36

675. Delete clause 36 because requiring taxpayers appealing tax decisions to deposit 20% of the disputed amount before appealing at the High Court impedes access to justice and the right of appeal especially where the amounts involved are high.

Committee observation

The Committee adopted the proposal to delete this clause, observing that the right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice. The high court has the discretion to determine the security once a matter is before the court.

Clause 76

676. Delete clause 76, because it will have a huge impact both on employers and employees who will be required to contribute 3% of an employee's income each. Considering the recent increase in NSSF rates and the increase in inflation rates, the provision is very untenable.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 24 (b) (x)

677. Delete Clause 24 (b) (x) because an increase in the turnover tax from 1% to 3% is quite high considering the economic health of small businesses in the Country.

Committee Observation

The Committee rejected this proposal. It however amended the clause to retain the threshold of between one million shillings to twenty-five million shillings.

Clause 10

678. Delete Clause 10 (3) because by taxing the turnover rather than the gains, the tax is likely to be a disincentive for persons seeking to engage in digital asset trading. Additionally, the requirement for remitting the tax to the commissioner may lead to additional administrative costs and may require the deployment of additional resources to meet tight deadlines.

Committee Observation

The Committee observed that the rationale for imposing a low rate of tax at gross fair market value is to make it administratively possible for trading platforms to comply. The committee understands the administrative difficulty that would be imposed on trading platforms if the tax was imposed on gains.

3.124 NGO COUNCIL

Clause 43 (a) (vi)

679. Delete Clause 43 (a) (vi) to the Finance Bill 2023 because it will lead to a significant effect on the cost of living which might lead to job losses in some sectors of the economy.

Committee Observation

The Committee accepted some of the proposals noting that there is a need to protect local industry in the various sectors in which the levy is proposed. The committee also noted that since there is no sufficient local production capacity for fish the rate was reduced to 10%.

3.125 KENYA UNION OF CLINICAL OFFICERS

Clause 4

680. Delete Clause 4 because it's unfair to taxpayers because foreign exchange losses are caused by macroeconomic factors, which are beyond the taxpayers' control. Additionally, this proposal will impose a huge administrative burden on the part of taxpayers as companies will need to track foreign exchange losses per year of income as they get realized.

Committee Observations

The Committee observed that the proposal in the Bill indeed allows the deduction of foreign exchange losses. The Committee made further amendments to extend the period from three years to five years.

Clause 24

681. Delete clause 24 and retain the current income tax rate at 30% because the proposal is discriminatory against high-income earners, and may drive expertise out of the country.

Committee Observation

The committee rejected the proposal

The Committee considered the proposal; however, it amended as follows:

500,000- 800,000 32.5% per month

Above 800,000 35% per month

This will enable government raise more revenue.

Clause 76

682. Delete the clause in its entirety and implement the Housing program under the current legal framework because the imposition of 3% will be a burden to both employers and employees considering that other deductions already affect the employed Kenyans.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.126 THIRD WAY ALLIANCE

Clause 24 (b) (viii)

683. Delete Clause 24 because the transport sector is already reeling under the high cost of fuel, and a further increase in the cost of transport will have a negative impact on the cost of doing business from a cash flow perspective.

Committee Observation

The Committee agreed and amended the clause to include two thousand five hundred shillings per tonne of load capacity per year or five thousand shillings per year whichever is higher.

Clause 36 (a)

684. Delete Clause 36(a) based on the following unfair and unconstitutional reasons:

- i. This proposal presumes that a taxpayer is guilty until proven innocent.
- ii. How much of the VAT refunds are still payable by KRA?
- iii. Could it be that 20% is deposited and never repaid?
- iv. Why would the law only apply to a taxpayer and not the KRA?
- v. Surely, this is against the equitable principle of taxation

Committee Observation

The Committee adopted the proposal to delete this clause, observing that the right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice. The high court has the discretion to determine the security once a matter is before the court.

Clause 28

685. Delete Clause 28 because push up the cost of fuel which will consequently spike the general cost of living.

Committee Observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 43 (a) (iv)

686. Amend Clause 43 (a) by deleting paragraph (iv) because it has an impact on local manufacturers and therefore the excise duty should only be levied on imported pasta. Further, it is proposed that the National Treasury should consider increasing the Excise Duty from the current 20% to 30% to increase tax revenues.

Committee Observation

The Committee deleted the proposal in the Bill to help protect the local manufacturers of pasta and other related products to keep the prices of those items low. Thus the excise duty was retained to apply only to imported pasta items.

Clause 43 (a) (v)

687. The Bill proposes to include Excise Duty on both locally manufactured and imported sugar confectionary products at the rate of KES 36.74/kg – currently, this is levied only on imported products. Thirdway Alliance notes that this is punitive, especially towards manufacturers.

Committee Observation

The Committee observed that there is a need to protect local sugar manufacturers of sugar therefore amended the clause to provide for the excise of shs.5 to apply to imported sugar.

Clause 24

688. Delete Clause 24(b) because it will not only lead to a drain of skilled labour out of the country but will also counteract the government's efforts to make Kenya an attractive destination for international workers and individual investors.

Committee Observation

The Committee rejected the proposal

The Committee considered the proposal and it amended it as follows:

500,000- 800,000 32.5% per month

Above 800,000 35% per month

This is to provide for progressivity in the PAYE bands.

689. Delete Clause 76 on the National Housing Development fund is relatively new having been established in 2018 and it will take time to build up its funding base and capacity to finance large-scale housing projects.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.128 SCAD

Clause 38

690. The Organization proposes retaining annual inflation adjustment for all tobacco products, alcoholic beverages and Sugar-sweetened beverages. According to the Organization removing it will only benefit manufacturers and increase consumption of unhealthy goods because prices will decrease and could have negative health and economic effects. By keeping the adjustment, the consumption will be steady because these products' relative prices do not decrease.

Committee Observation

The Committee rejected this proposal noting that the proposed amendment seeks to ensure predictability in the tax system.

3.129 GOODIT INTERNATIONAL LTD

Clause 76

691. The organization supports the 3% contributions towards the National Housing Development Fund because the fund has the potential to significantly transform the provision of affordable housing in Kenya. The initiative will create job opportunities for young people. To address the concerns on mandatory contributions, they propose for mechanisms that accommodate the informal sector be implemented.

Committee Observations

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.130 ANDERSEN

Clause 12(a)

692. Amend the bill by deleting clause 12(a) since these requirements will increase tax administration costs on the part of the taxpayer (SMEs) who will have to purchase ETIMS. Businesses in remote areas may have difficulty in raising invoices due to connectivity issues. Increased risk on the taxpayers in cases where they submit inaccurate data and may face consequences such as penalties or fines. Consider provisions of law that will encourage all traders to secure ETIMS, subsidized by the Government, after which the current proposal can be considered.

Committee Observations

The Committee rejected this proposal noting that the eTIMS system is in place and working. The Commissioner would provide administrative guidelines to clarify on the issues raised on the implementation of the system.

Clause 24(b)(vii)

693. Amend clause 24(b)(vii) by deleting paragraph 5 (m) of the ITA. The proposal will slow the growth of the digital content creation industry, there will be increased costs of doing business for digital platforms and content creators and denial of access to information to the general public. Further, the organization feels the proposal will discourage content creators from creating content due to high taxation costs and reduced income hence reduced competitiveness. They propose to reduce the rate from 15% to 5% and cap the provision to encompass content creators who earn an aggregate value of twenty-four thousand shillings in a month or more.

Committee Observations

The Committee considered this proposal and amended the rate of tax from 15% to 3% to incentivize youthful content creators.

5. Amend by deleting paragraph 5 (l) of the ITA because this will increase administrative costs, limit cash flow and create difficulty in obtaining tax refunds and credits.

Committee Observations

Clause 28

694. Amend by deleting the proposal and retaining Section 5(2) (aa) and (ab) of the VAT Act because the proposal will increase the cost of production because most industries are heavily dependent on fuel and Increased transportation costs of goods and supplies will escalate the prices of those goods. They propose to retain the current provision of 8%. Further, LPG should be zero-rated because having LPG in the exempt category means that businesses will be unable to claim input tax and the cost of LPG will be higher to cover up for the input VAT lost.

Committee Observations

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 33 (a) (xxx)

695. Amend by deleting the clause since it seeks to remove exemptions from goods listed in paragraphs (149,150,151, & 154) and retain the section as it currently is. These products should be moved back to the zero-rated category, noting that having them in the exempt category means no input VAT can be claimed on them. This means the cost of these products will be higher to cover up for the input VAT lost.

Committee Observations

The Committee observed that there is a need to retain them as Zero-Rated so that they can be affordable to Kenyans.

Clause 36

696. Delete clause 36, because the High Court already has the discretion to order that a litigant deposit security before their matter is heard. It is discriminatory in that maybe one has a strong case but because they are unable to pay the 20% deposit they are locked out of justice. This violates Article 48 of the Constitution of Kenya, 2010 which grants a right to access to justice. They also propose that if the provision is accepted then the deposit shall be placed into an interest-earning account until the conclusion of the matter.

Committee Observations

The Committee adopted the proposal to delete this clause, observing that the right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice. The high court has the discretion to determine the security once a matter is before the court.

Clause 76

697. Delete Clause 76 which proposes a 3% contribution to the National Housing Development Fund because the introduction of additional deductions from an employee will reduce the employee's disposable income. It will freeze employment due to the increase in contributions to be made by employers on behalf of the employees. The proposal does not address the concerns of employees who may already be paying mortgages, are homeowners, or are nonresidents who are in the country temporarily and qualify for housing. Further, there is no legal framework guiding on who will be responsible for managing the funds.

Committee Observations

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.131 UNION OF KENYA CIVIL SERVANTS

Clause 5 (a)(ii)

698. Amend clause 5(a) (ii) by including private sector workers. The union supports the proposal; however, it potentially discriminates between public and private sector workers in the treatment of taxation reimbursements. Also, it provides a potential abuse where the cost of purchase of assets can be reimbursed regardless of who owns the assets purchased.

Committee Observations

The Committee considered the proposal, however, the Committee determined that the clause should affect only public sector employees whose rates are already determined.

Clause 24 (b)

6. Delete Clause 24(b) (i) that proposes to increase the PAYE tax band of individuals earning above Ksh. 500,000 per month. The proposal may adversely place a huge tax burden on the said workers.

Committee Observations

The Committee rejected the proposal

The Committee considered the proposal; however, it amended it as follows:

500,000- 800,000 32.5% per month

Above 800,000 35% per month

This will enable the government to raise more revenue.

Clause 76

699. Amend by deleting Clause 76 because workers will suffer an increased tax burden from deductions arising from mandatory deductions. They propose to delete the proposal to allow further engagement with workers and a feasibility study conducted.

Committee Observations

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.132 GNG LAW

Clause 33 (b) (v) & 34 (a) (iv)

700. Amend by deleting Clause 33 (b) (v) & 34 (a) (iv) because the reclassification of services as exempt means the companies will not be able to take a deduction of the input VAT incurred in the provision of the services and this input VAT is therefore passed to the foreign companies consuming the services. This has the negative effect of making the services of Kenyan companies more expensive hence affecting their competitiveness in the international marketplace. It may also have the effect of limiting the capacity of such companies to employ more Kenyans where their operational costs are very high due to the VAT exemption.

Committee Observations

The proposal was rejected by the Committee. The Committee resolved to reclassify the Exportation of service to exempt but deleted paragraph 36 on the transfer of a business as a going concern.

Clause 33(a)(xix)

701. Amend by deleting Clause 33(a) (xix) because the proposed amendment will significantly increase the cost of putting up a plastic recycling plant and this will negatively affect government efforts in battling plastic waste management. It is therefore important that government enacts policies and laws that incentivize investors to consider investing in this area.

Committee Observations

The Committee agreed with this proposal noting the need to support plastic recycling as an incentive to support greening.

Clause 43 (b) (viii)

702. Amend Clause 43 (b) (viii) by aligning the taxation of digital lenders with the banks and other licensed financial institutions. The proposal in the bill will increase the cost of lending in relation to digital lenders potentially making it more difficult for the low- income earners mainly served by the digital lenders to access finance and capital. Additionally, this provision will have the effect of creating an uneven playing field for the digital credit providers compared to the traditional lenders (banks) where their core incomes (interest and return on loans) are specifically excluded from the purview of excise duty.

Committee Observations

The Committee agreed with the stakeholder and deleted the proposed sub-paragraph (viii).

New Clause

Delete Section 31(1) of the VAT Act, 2013 and replace it with the following;

Where a registered person has made a supply and has accounted for and paid tax on that supply but has not received any payment from the person liable to pay the tax or, after three years from the date of that supply; or that person to whom the supply was made has been placed under statutory management through the appointment of an administrator or receiver or liquidator that person may apply to the commissioner for a refund provided that;

- a) No application for a refund shall be made under this section after the expiry of ten years from the date of the supply; and
- b) The refund will be made in compliance with Section 47(5) of the Tax Procedures Act or amounts may be credited to the taxpayer record for use against future Value;
- c) Where the tax refunded under subsection (1) and (2) is subsequently recovered from the recipient of the supply, the registered person shall refund the tax to the Commissioner within sixty days of the date of the recovery.
- d) If payment is not made within the time specified under subsection (a) and (b), an interest of two percent per month or part thereof of the tax refunded shall forthwith be due and payable:
- e) Provided that the interest payable shall not exceed one hundred percent of the refunded amount.

3.133 KUSCCO

Clause 2

703. Amend Clause 2 by harmonizing the definition of a “person” with the definitions in the Tax Procedures Act (TPA) and the Value Added Tax (VAT) Acts. The adoption of the definition of "person" from the TPA and VAT Acts will contribute to greater clarity and consistency in the ITA and mitigate potential ambiguity. This change would facilitate precise interpretation of the law, minimizing the potential for misinterpretation or misuse.

Committee Observations

The Committee agrees noting that the definition of the word ‘person’ is already defined under Tax Procedures Act, 2015.

Clause 12

704. Amend Clause 12(a) by providing proper guidance on exemptions as well as treatment of expenses that are purely driven by accounting standards. This will enhance clarity and compliance.

Committee Observations

The Committee does not agree to the proposal. The eTIMS system is in place and working. The Commissioner would provide administrative guidelines to clarify on the issues raised on the implementation of the system.

Clause 20

705. Amend Clause 20 by reverting to the original provision that allows Withholding Tax to be remitted on or before the twentieth day of the month following the month in which the tax was deducted. The new provision could have a significant impact on the payer's cash flow and increase administrative burdens due to the shorter time frame. In addition, accounting for WHT on accruals will become complex owing to the fact that it takes time to determine if an accrual will be reversed or retained on a monthly basis. The proposal has also not made it clear if the 24 hours include outside working hours (nights, weekends, and public holidays).

Committee Observations

The Committee did not agree to the proposal. There is a need to harmonize withholding tax with other rates. The Committee recommends that the time frame be amended to 5 working days.

Clause 26 (b)

706. Delete Clause 26(b) because this proposal could significantly increase the cost of business, particularly for Savings and Credit Cooperative Societies (SACCOS), which often need to transfer property between their different branches and operations. The limit on CGT exemptions for internal reorganizations carried out before the lapse of 24 months could significantly increase the cost of business, and/or discourage business restructuring and growth.

Committee Observations

The limit on the Capital Gains Tax immunity carried before the lapse of 24 months could significantly increase the cost of business or discourage business restructuring and growth. The committee therefore rejects the proposal.

Clause 76

707. Amend Clause 76 because the proposal could reduce employees' take-home pay and increase employers' costs and thus potentially impacting employment opportunities. The National Housing Contribution Fund should be voluntary, with a clearer eligibility guideline. Further, allow employers to opt-out to pay to the National Housing Development Fund in respect of each employee and exempt those servicing mortgages.

Committee Observations

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 53

708. Delete the Clause because it would make tax enforcement more feasible and practical. It would also prevent potential misuse of power. Consequently, this would promote fairness in the tax system and encourage better compliance.

Committee Observations

The Clause is set to make tax enforcement achievable and practicable to generate revenue and ensure compliance. The proposal was not adopted.

Clause 63

709. Delete Clause 63 because this would strip both the Commissioner and the Cabinet Secretary of their authority to grant waivers. It could potentially leave taxpayers without recourse in situations where the Commissioner makes an error in an assessment, as taxpayers would be obliged to pay penalties without a provision remission provision. Further, an additional clause should be considered to permit waivers in situations where errors have been made inadvertently.

Committee Observations

The Committee noted that there is a need to remove the discretion in consideration for abandonment or remission of tax, waivers or penalties to provide equity and fairness in treatment of taxpayers. The Committee did not adopt the proposal.

3.134 KENYA MEDICAL PRACTITIONERS' PHARMACISTS AND DENTISTS' UNION (KMPDU)

Clause 5

710. Amend Clause 5 subsection (b) by deleting paragraph (fa) because this is not an income that is deemed to benefit an employee but an expenditure made in the fulfillment of an employer's obligation and hence its taxation defeats the purpose of being assigned duties out of office when support allowance is slashed and taxed.

Committee Observation

Paragraph 5 (2) (a) (ii) of the Bill provides for the exclusion of all reimbursements from taxable employment gains. The Committee rejected this proposal.

Clause 9

711. Delete Clause 9 because lowering of turnover tax threshold and lowering the percentage tax levied is unjustified as it allows all persons and entities to pay tax irrationally even when there are no justified profits made by small businesses.

Committee Observation

The proposal to delete this Clause was accepted. Additionally, the Committee amended the TOT thresholds to be "one million Kenya shillings but do not exceed twenty-five million Kenya shillings" at 3 percent

Clause 10

712. Delete Clause 10 and anchor it to the Central Bank Act because the correct position to legitimize digital assets is to have a policy on it through the CBK Act and have a separate regulation to control the trading and use of digital assets.

Committee Observation

The Committee disagreed with the proposal to clause 10 of the Finance Bill 2023 because they introduce subjectivity in the interpretation of the sub-clauses therein. However, the Committee further recommended for amendment of the remission of With Holding Tax to 5 Working Days.

Clause 19

713. Amend Clause 19 to include an appropriate and equitable proposal and the need to capture individuals who are making early retirement. There is a need for the government to have adequate buffers for all elderly persons to assure them of the right to healthcare through adequate health insurance coverage as is it in the Medicare Act of the USA which combines funds from both the retirement schemes and pension schemes to provide for healthcare benefits.

Committee Observation

The Committee accepted the proposal to amend the First Schedule to the Income Tax Act to provide for the exemption of the transfer of pension funds to post-medical retirement. This will allow the transfer of the pension fund to this fund.

Clause 31

714. Amend by aligning Clause 31 to ensure fairness and equal benefit of the law amongst all traders and business entities. The proposal is unequal and discriminatory to the digital service providers who have been singled out and forced to register irrespective of the statutory threshold.

Committee Observation

It is a clean-up to clarify that suppliers of imported digital services over the internet, an electronic network or through a digital marketplace should be registered irrespective of their annual turnover of taxable supplies. The Committee adopted the proposal.

Clause 76

715. Amend by deleting Clause 76 because the proposed inclusion of additional deductions for the National Housing Development Fund will overburden individuals with housing and thus, these contributions be voluntary for employees who are interested in purchasing a home while employed.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.135 DIGITAL MEDIA PRACTITIONERS

Clause 24(b)vii) - (l) and (m)

716. Amend by deleting Clause 24 (b) (vii) because - the proposal does not specify whether the work done by the digital content creators is a professional service and which fees payable will be subject to withholding tax. The additional tax is discriminatory as the business of digital content creators should not be treated differently from other businesses in the country.

Committee Observation

The Committee accepted the proposal on Clause 24(b)(vii)(l) and additionally amended that the threshold be deleted. However, Clause 24(b)(vii)(m) was rejected by the Committee and further amended that digital content monetization be at the rate of 5 percent to harmonize the rates.

3.136 KENYA SCHOOL OF LAW (STUDENTS)

Clause 24 (b) (vii) (m)

717. Delete Clause 24 (b) (vii) (m) introducing digital content monetization withholding tax (WHT) at the rate of fifteen percent. because the section focuses on monetary gains, which is a blanket treatment of the sector and fails to recognize the broader societal benefits provided by digital content creators.

Committee Observation

This proposal was rejected by the Committee and further amended that digital content monetization is at the rate of 5 percent to harmonize the rates.

Clause 28(a)

718. Amend by deleting Clause 28(a) because an increase in VAT on petroleum fuel from the current 8% to 16% will worsen the economic crisis in the country.

Committee Observation

The objective of the proposal is to harmonize the VAT rate and allow the normal market forces of supply and demand to operate the Committee rejected the proposal.

Clause 36(a)

719. Amend by deleting Clause 36(a) because this undermines the right to a fair hearing, the presumption of innocence, and the prohibition against condemning someone unheard. Further, the Constitution provides for fair judicial system that is accessible to all individuals regardless of their status.

Committee Observation

The Clause seeks to provide for payment of twenty percent of tax in dispute before an appeal is lodged at the High Court and the amount so paid be refunded to the taxpayer where the decision of the Court is in favor of the taxpayer. The right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice and reduce working capital. The high court has the discretion to determine the security once a matter is before the court. This proposal was accepted by the Committee.

Clause 52:

720. Amend by deleting clause 52 because the provision would not only violate the property right but also undermine the principle of natural justice and due process.

Committee Observation

The Committee did agree to this proposal because the amendment poses a risk to the rights of taxpayers as it removes the requirement for the Commissioner to notify the taxpayer of the intention to register security against their property. As a result, taxpayers would not be able to challenge the decision of the Commissioner before the security is registered

Clause 53

721. Delete Clause 53 because the amendment is prejudicial to taxpayers as its discriminatory. The Commissioner may use discretionary powers while issuing the notice for default.

Committee Observation

The Committee rejected this proposal as it is not discriminatory but and will help the commissioner use powers while issuing notice for default.

Clause 56

722. Amend by deleting Clause 56 because the amendment has the power to both benefit and disadvantage taxpayers who have overpaid their taxes. While it allows taxpayers to use their overpaid taxes to offset current and future tax liabilities, including outstanding tax debts, there is a foreseeable challenge where the Commissioner has the authority to apply these funds towards future tax debts or current tax debts instead of issuing a refund to the taxpayer; therefore, the Commissioner is not obligated to pay interest on overpaid tax if they are not refunded within two-years.

Committee Observation

Taxpayers are allowed to elect refunds or request for offset for existing or future tax liabilities. The Committee did not adopt this proposal.

Clause 59

723. Amend by deleting clause 59 seeking to Amend Section 56 subsection 3 of Tax Procedure Act, 2015 to limit the Tribunal or Courts to allow taxpayers to add new grounds for objection in the appeal process. Allowing the amendment will disenfranchise taxpayers seeking to introduce new grounds for objection to the tax appeal tribunal and courts, effectively eliminating the High Court's discretion to allow additional grounds to be introduced.

Committee Observation

The proposal restricts the power of the court to admit new grounds of appeal depending on the circumstance and further takes away the inherent power of the courts to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. This proposal was accepted by the Committee.

Clause 76:

724. Amend by deleting clause 76 of the Bill which seeks to amend Section 31 of the Employment Act, 2007 by introducing a new Section 31B. Those deductions into the National Housing Development Fund are a violation of individual autonomy in property ownership.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.137 WEST KENYA SUGAR COMPANY

Clause 20

725. Amend by deleting subsection (c) which proposes that the tax deducted from income subjected to Withholding tax should be remitted to the Commissioner within 24 hours after the deduction. This requirement is punitive and appears prejudicial against taxpayers. Submit that remittances be done within the current provisions.

Committee Observation

The Committee reduced the rate to 5 percent to harmonize with other rates and increased the remittance to five working days. This proposal was rejected.

Clause 35

726. A new proposal to delete “two days” appearing in Section 13(5) and substitute it with “fourteen days”. The new proposal will allow more time for the taxpayer to serve a copy of the appeal to the Commissioner.

Committee Observation

This clause seeks to provide for the filing of appeal documents necessary to enable the Tribunal to decide on the tax appeal. The Committee therefore rejected this proposal.

Clause 36

727. A new proposal to delete “two days” appearing in Section 32(1A) and substitute it with “fourteen days”. The extension of the timeline from two days of serving a copy of the notice on the other party.

Committee Observation

This proposal was rejected by the Committee as the Clause seeks to provide for payment of twenty percent of tax in dispute before an appeal is lodged at the High Court and the amount so paid be refunded to the taxpayer where the decision of the Court is in favour of the taxpayer. The right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice and reduce working capital. The high court has the discretion to determine the security once a matter is before the court.

Clause 33(a)

728. Amend by deleting 33(a)(xxx) under the Head: 148, 149, 150, 151 and 152. That moving the Supplies to the First Schedule on exemption from VAT will increase the cost of pest control products, transportation of sugarcane and fertilizer. Noting that all input VAT will no longer be claimable. Propose that the tariff lines 148, 149, 150, 151 and 152 remain in Schedule 2 of the VAT Act as Zero-rated supplies.

Committee Observation

The proposal in paragraph 148, to classify agricultural products as zero-rated is to ensure that it doesn't attract input VAT. Paragraph. 149 proposal on agricultural pest control products) to reclassify from zero-rated to exempt will increase the fertilizer and pest control costs which will have a significant impact on farmers, who already struggle with low yields due to poor soil quality and inadequate farming techniques. The proposals on Paragraph 150, Paragraph 151 and Paragraph 152 were rejected by the Committee because agriculture remains the backbone of the economy. VAT exemption results in restrictions on the deductibility of input VAT. Therefore, the Committee agreed to the proposal.

Clause 43(a)(vi)

729. Amend by deleting the proposal to charge excise duty at the rate of Shs. 5 per kg on sugar excluding sugar imported or locally purchased by a registered pharmaceutical manufacturer. The sugar industry in Kenya is currently uncompetitive and any such introduction makes locally-produced products more uncompetitive going forward. Further, lead to increased importation and grey trade which kill the local industry.

Committee Observation

The Committee acknowledged the submission by the stakeholder and did not heed the proposal. However, the Committee amended the provision so that excise duty is imposed on imported sugar.

Clause 54(b)

730. Delete the new section 42A Subsection (4B) proposing that tax withheld under the section shall be remitted to the Commissioner within three days after the deduction was made. The administrative burden and risk of error from this requirement is high making it prejudicial against the taxpayer. Retain the current provision setting 20th of the next month.

Committee Observation

After considering this submission by the stakeholder, the committee rejected it. However, the Committee provided an amendment to allow remission of withheld tax within 5 working days as the three days proposed will pose significant compliance challenges.

Clause 57

731. Amend by deleting 57(a); the time provided to the taxpayer to submit the information specified in the notice is very short and the risk of lack of submissions is very high making this requirement appear to be prejudicial. Retain the current provision within 30 days.

Committee Observation

The proposal to increase the period to 30 days will make the provision redundant since the Commissioner only has 14 days to make the decision. The information must therefore be provided within the period that the Commissioner is required to make the decision. This proposal was rejected by the Committee.

3.138 JUA KALI CONTRACTORS' FEDERATION OF KENYA

Clause 76

732. Support the amendment to the Employment Act, 2007 by inserting new section 31 A. The Amendment will improve livelihoods through the provision of affordable housing and increased income from labor supply.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.139 MUNENE AND MICHENI & COMPANY ADVOCATES

Clause 8

733. Delete clause 8 and replace it with the following (3A) In the case of a family trust, sub-section (3) shall not apply to— a) any amount that is paid out of the trust income on behalf of any beneficiary and is used exclusively for education, medical treatment or access to affordable 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. The original intention of the provision was to broaden the financial accessibility of family trusts to ordinary Kenyans. The amendment will create tax incentives that would encourage Kenyans to save and accumulate income for the benefit of their families.

Committee Observation

After going through the stakeholder's submission, the Committee rejects it. Section 11 (3A) of the Income Tax Act on taxation of family trusts contradicts the other provisions of Section 11 which guides on taxation of trusts.

Clause 46

734. Delete clause 46 of the Bill because the proposed amendment is not international standard practice and will make Kenya uncompetitive.

Committee Observation

The Committee did reject this proposal after careful consideration because the proposed amendment is meant to compel trustees who are residents in Kenya to keep records and avail them to the Commissioner for compliance check on their tax obligations.

Clause 30

735. Delete clause 30(b) that introduces VAT on compensation payments received by bonafide owners of supplies, this is because the rationale for the proposed change is not clear as compensation for loss of goods does not comprise 'consideration' (as defined in the legislation) for a taxable supply of goods and it is unlikely underwriters will include VAT on the compensation payments. Further, the ambiguity in the rationale and framing of the clause: VAT is not included in the compensation, it is also not clear whether the recipient is obliged to declare VAT over and above the compensation amount received or whether the amount received is deemed to be VAT inclusive.

Committee Observation

Determination of the amount of VAT to be recovered is provided in the proposal. That is, where a taxpayer has through an insurance or contract or otherwise arranged for compensation, and the compensation

includes value-added tax, the compensation shall be declared and the value-added tax thereon remitted to the Commissioner. This proposal was rejected by the committee.

Clause 43 (c) (ii)

736. Delete clause 43(c)(ii) on the definition of “other fees” in the Excise Duty Act, 2015 because there has been a prolonged confusion with the interpretation and implementation of “other fees” on Excise Duty charged by financial institutions (including brokerage firms governed by the Insurance Act) since its introduction through the Finance Act, 2012. Further, the proposal introduces unfair taxation of services supplied by brokers (and other financial institutions) as similar types of services offered by nonfinancial institutions will not be similarly taxed.

Committee Observation

The Committee took note of the submission by the stakeholder however the proposal was rejected. the Committee observed that the Clause seeks to reduce the rate of excise duty on fees charged by financial institutions from 20% to 15%.

Clause 36 (a)

737. Delete clause 36 that requires a party that is not the Commissioner to deposit with the Commissioner an amount equivalent to twenty percent of the disputed tax or security equivalent to twenty percent of the disputed tax before filing the appeal. This limits the taxpayer’s access to justice and the right to a fair hearing. A deposit, if any, should be at the discretion of the High Court. Further, a 20% deposit could restrict the taxpayer’s cash flow/liquidity.

Committee Observation

The Committee adopted the proposal to delete this clause, observing that the right to appeal is constitutional, and requiring a 20% security deposit by a party to a dispute will limit access to justice. The high court has the discretion to determine the security once a matter is before the court. The Committee rejects this proposal.

Clause 20 (c)

738. Delete clause 20 (c) which requires remission of the tax within Twenty-Four hours after the deduction is made. This will be labor-intensive and any unexpected delay will accrue penalties.

Committee Observation

The Committee observed that the proposal in the Bill to have withholding tax agents remit the withheld tax within 24 hours is cumbersome and costly to businesses given that the time period is being reduced from the 20th of the next month to just 24 hours. Therefore, the Committee proposed to increase the period to 5 working days. Therefore, their proposal was rejected.

Clause 54 (b)

739. Delete clause 54(b), 2015 which requires remission of withheld Tax within three days after deduction is made. This will be labor-intensive/costly and any unexpected delay will accrue penalties

Committee Observation

The Committee considered this proposal and amended it to allow remission of withheld tax within 5 working days as opposed to the three days proposed which would pose a significant compliance challenge. The proposal to delete the Clause was rejected by the Committee.

Clause 33 (a) (xxx)

740. Delete clause 33(a)(xxx) that removes the zero rating for inputs and raw materials whether produced locally or imported, supplied to manufacturers of agricultural pest control products. This is to Cushion local manufacturers /farmers from an increase in the cost of production.

Committee Observation

The Committee accepts this proposal on inputs or raw materials supplied to manufacturers of agricultural pest control products. The proposal to classify agricultural products as zero-rated is to ensure that it doesn't attract input VAT

Clause 43 (a) (vi) (imported cellular phones)

741. Delete part 1 of the First Schedule to the Excise Duty Act (No. 23 of 2015) that increase excise duty on imported cellular phones to 10%. The proposal is unconstitutional as it violates the right to free will.

Committee Observation

The Committee observed that the proposal in the Bill was largely to align with Government's policy to assemble mobile phones and therefore need to protect against cheap imports.

Clause 76

742. Delete clause 76 which provides for the deductions of payments by employers and employees to the National Housing Development Fund. The proposal is unconstitutional as it violates the right to free will. There is no sufficient civil education on the subject

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clauses 78 and 79

743. Delete clauses 78 and 79 on the expiry of the instrument after 10 years because there is a need for the law to be amended to keep pace with changing circumstances.

Committee Observation

The proposals for deletion of the Clauses were accepted.

3.140 INTERNATIONAL CHAMBER OF COMMERCE (ICC)/BasiGO/E-MOBILITY KENYA LIMITED

In a meeting with the Committee on 26th May 2023 the International Chamber of Commerce submitted the following proposals for consideration by the committee.

Clause 33- VAT Exception on Electric Bicycles

744. Amend clause 33 of the Finance Bill to include the supply of electric bicycles of tariff heading 87.12 as VAT exempt for a period of 5 years. This will increase critical mass adoption of electric bicycles which will promote clean energy.

Committee Observation

The Committee proposes to Zero taring of supplies for the manufacture of electric motorcycles, electric bicycles, electric buses, Lithium and solar batteries in line with the government's policy to support the movement from the use of petroleum fuels to green energy. Therefore, the proposal by the stakeholder is captured in the proposed amendments

Clause 33 – VAT Exception for Electric Motorcycles

745. Amend clause 33 of the Bill to include as VAT exempt supply of motorcycles of tariff heading 8711.60.00, for a period of 5 years. This is aimed at promoting critical mass adoption of motorcycles. After the lapse of the five years the rates can revert to 16%, or a graduated increase may be put.

Committee Observation

The Committee proposes to Zero taring of supplies for manufacture of electric motorcycles, electric bicycles, electric buses, Lithium and solar batteries are in line with government's policy to support the movement from the use of petroleum fuels to green energy. Therefore, the proposal by the stakeholder is captured in the proposed amendment.

Clause 33- VAT Exception for Lithium-Ion Batteries

746. Amend clause 33 of the Bill to include as VAT exempt **importation of Lithium-Ion Batteries** similar to Solar Lithium-Ion Batteries. This will also enhance the adoption of clean energy through critical mass adoption of electric motorcycles.

Committee Observation

The Committee proposes to Zero rating of supplies for manufacture of electric motorcycles, electric bicycles and electric buses. Lithium and solar batteries are in line with government's policy to support the movement from the use of petroleum fuels to green energy. Therefore, the proposal by the stakeholder is captured in the proposed amendments

Clause 33- VAT Exemption for Electric Buses

747. Amend Clause 33 to include VAT-exempt electric buses of *tariff heading 87.02, for a period of five years*. This will also enhance the adoption of clean energy thereby boosting Kenya's net zero emission obligations.

Committee Observation

The Committee proposes to Zero taring of supplies for manufacture of electric motorcycles, electric bicycles, electric buses. Lithium and solar batteries are in line with government's policy to support the movement from the use of petroleum fuels to green energy. Therefore, the proposal by the stakeholder is captured in the proposed amendments

Clause 43- Excise Duty Exception for Electric Motorcycles

748. Amend Clause 43 of the Bill by inserting ‘*“Motor vehicles of tariff 87.11 other than electric motorcycles, motor-cycle ambulances and locally assembled motorcycles.”*’ Currently, electric motorcycles are subject to excise duty at the rate of KES 11,608.23, this proposal is for electric motorcycles to have similar treatment to ICE motorcycles which do not attract excise duty.

Committee Observation

The Committee proposes to Zero taring of supplies for manufacture of electric motorcycles, electric bicycles, electric buses. Lithium and solar batteries are in line with government's policy to support the movement from the use of petroleum fuels to green energy. Therefore, the proposal by the stakeholder is captured in the proposed amendments

Clause 24

749. Amend clause 24 of the Bill to include ‘in respect of a company whose business is the local assembly of electric mobility vehicles, fifteen percent for the first five years from the year of commencement of its operations. The Proposal will effectively reduce the Corporate tax rate for companies locally assembling electric mobility vehicles CKD and SKD encouraging significant foreign investment capital to flow into the country to promote carbon mitigation efforts.

Committee Observation

The Committee proposes to exempt supplies under the VAT Act, not under income tax for the manufacture of electric motorcycles, electric bicycles, electric buses and lithium batteries in line with the government's policy to support the movement from the use of petroleum fuels. Therefore, the proposal by the stakeholder is captured in the proposed amendments in the VAT Act.

New Clause

750. Amend the Second Schedule of the Excise Duty Act by inserting an exempt paragraph to accord electric bicycles the same treatment as other non-electric bicycles. This will encourage mass adoption and attract foreign investments in the sector thereby promoting Kenya’s compliance with its emission reduction obligations.

Committee Observation

The Committee proposes to exempt supplies under the VAT Act not under income tax for the manufacture of electric motorcycles, electric bicycles, electric buses and lithium batteries in line with the government's policy to support the movement from the use of petroleum fuels. Therefore, the proposal by the stakeholder is captured in the proposed amendments in the VAT Act.

3.141 WESTMINISTER CONSULTING

Clause 2 on the definition of ‘person’

751. Amend clause 2(b) by amending the definition of ‘*related persons*’ because it seeks to define tax obligations and liabilities imposed on an individual can also now be extended to other family members or kinship. If this is to be the case, then the law is flawed considering that relatives are separate legal persons and they may not have any relationship with the principal person’s tax matters.

Committee Observation

The proposal was rejected by the Committee and no amendment was made to the definition.

Clause 8

752. Delete clause 8 since it seeks to tax contributions paid out of the trust income on behalf of any beneficiary and put to use exclusively for the purpose of education, medical treatment, early adulthood housing or in the alienation of poverty There are several Kenyans who engage in the noble cause of serving the less privileged and receive no reprieve from Government for this work. We, therefore, recommend retention of this provision in the Income Tax Act as it will work to encourage more members of society to give back to the less privileged.

Committee Observation

The proposal was rejected. The Committee noted that section 11 of the Income Tax deals with all kinds of trusts, therefore there is no need to specifically provide for family trusts.

New Clause

753. Amend by inserting the following new clause immediately after clause 29—
29A. Section 12 of the Value Added Tax Act, 2013, is amended in subsection (1), by adding the following proviso “Provided that in the case of a national flag carrier, the time of supply shall be the date on which the goods are delivered or services performed”

Committee observation.

The proposal was accepted by the committee.

Clause 33

754. Amend clause 33 by adding the following new item immediately after item 154—
155. Taxable supplies made to or by a school-feeding programme recognized by the Cabinet Secretary responsible for education.

Committee Observation

The proposal was accepted but was amended to provide for supplies of food only.

Clause 6

755. Westminster submitted that they are apprehensive that the proposed provision will make Kenya a very unattractive business destination that would seek to tax repatriated profits for all entities that accrue or derive their income from Kenya. They further submitted that under the current framework, a branch is considered a non-resident for Kenyan tax purposes. There have been two main differences in the tax treatment in Kenya of the income of a branch of a nonresident company (i.e., a Permanent Establishment), and that of a Kenyan subsidiary of a non-resident parent company. The current corporation tax rate on the income of a resident company is 30%, while that on the income of a branch is 37.5%. Thus, the rate applicable to a branch of a nonresident company **had remained constantly 7.5% higher than that** of resident corporate bodies, including a Kenyan subsidiary of a non-resident parent. However, currently, having paid tax at a higher rate, a branch may then remit its taxed profits to its head office without further deduction of tax, i.e., there has been no branch remittance tax in Kenya. Westminster submitted before the Committee that if this clause is passed it will seek to impose an additional 10% over and above 37.5% corporate tax paid by non-residents.

Committee Observation

The proposal was rejected. The Committee observed that the proposal seeks to define the formula for the calculation of repatriated income.

Clause 12

756. Amend the Clause to accommodate industries that due to the nature of their business may not be able to comply i.e., the airline industry, especially passenger ticketing that does not work like regular invoicing.

Committee Observation

The proposal was taken by the Committee, which observed that implementation of the electronic tax invoice system on ticketing will be administratively difficult.

Clause 23(c)

Delete Clause 23(c) since it seeks to restrict the current claim of investment allowance at a rate of 100% to hotel buildings, buildings and machinery used for manufacture which are located outside Nairobi and Mombasa. Notably, the provision shall not apply to investments which, due to the nature of their business are required to be located outside Nairobi City County and Mombasa County. The proposed amendments be deleted as it claws back incentives available to spur manufacturing especially in areas outside Nairobi and Mombasa counties which is critical to decongest Nairobi and Mombasa

Committee Observation

The proposal was agreed on, and the Committee proposed the deletion of paragraph (b).

Clause 33- Export of Services

757. Amend Clause 33 to make the export of services zero-rated. Exempting these services negates the very principle of VAT that pertains to the destination principle. In the National Tax Policy recently published and tabled in Parliament, the Government committed that all export of services and goods shall be zero-rated. Policies like this proposed amendment negate the aspirations of the Government to attract foreign direct investment in the country, especially in the service industry. It's worthwhile to note that countries like Singapore, India, the UAE, and even Partner States in the EAC like Rwanda are attracting the service industry to the detriment of Kenya.

Committee Observation

The proposal by the stakeholder was rejected on account of the fact that the policy referred to above has not been approved by the National Assembly and therefore cannot form the basis for the proposal in the Bill. Zero rating of Export of services has previously generated revenue losses due to the abuse of the provision through tax planning. Therefore, protecting revenue and making the administration of export services exempt them is a more efficient approach.

Clause 33- Aviation Industry

758. Westminster submitted that this is a welcome amendment to our tax laws, as it will make Kenya a more desirable location for key players in the global Aviation industry to set up shop by reducing the cost of carrying out their business operations. A ripple effect of this proposal is the creation and expansion of employment opportunities in the Aviation industry.

Committee Observation

The Committee acknowledged the proposal to expressly exempt from VAT on all aircraft and parts to spur growth in the aviation sector and reduce the administrative burden of compliance

Clause 34

759. Amend Clause 34 to include Business Process Outsourcing as Zero-Rated as opposed to exempt. The exemption has made the exportation of services more expensive as the input tax that was otherwise deductible for VAT purposes is no longer claimable, resulting in an upward adjustment in the cost of the supply.

Committee Observation

The Committee rejected to delete Paragraph 23 so as retain the item at zero rate because the exporters of taxable services will not be able to claim credit for VAT.

Clause 36

760. Delete Clause 36 because it will violate the constitutional provisions in Articles 48 and 50 on the right to access justice and the right to a fair hearing. Additionally, the tax measure will be very detrimental to the financial health of many businesses.

Committee Observation

The Committee noted the need for the National Treasury to access disputed taxes. However, the Committee noted that the requirement to deposit 20 % of the disputed tax before an appeal to the High Court would

limit the right to access justice. Further, the High Court has inherent authority to set the requirement for a deposit as it deems appropriate under the circumstances. The clause was deleted.

Clause 43- Excise Duty on Sugar

761. Amend Clause 43 to exclude companies importing industrial sugar that are under the duty remission scheme. Westminster observed that while sugar has negative effects on health, it is important to appreciate that sugar such as industrial sugar is utilized by manufacturers to make various products including bread, beverages, confectionaries etc. Some of these products are exported earning Kenya good foreign exchange revenue.

Committee Observation

The Committee amended the provision to provide for excise duty to apply only to imported sugar.

Clause 43- Excise Duty on Pasta

762. Westminster submitted that this proposal will have a negative effect on local pasta producers whose products will have to compete with imported pasta which may be coming into the country from jurisdictions where they enjoy tax breaks and government subsidies, which contribute to lower prices at the point of sale.

Committee Observation

After taking note of the submission from the stakeholder, the Committee accepted this proposal. This is important in protecting the local industry to give them a competitive advantage.

Clause 54 (a)

763. THAT, the Bill be amended in clause 54, by deleting paragraph (a) and substituting therefore the following new paragraph—

(a) in the proviso to subsection (1), by deleting the words “commencement of this Act” and substituting therefore the expression “1st July 2022”.

Committee Observation.

The proposal was accepted by the Committee. The amendment was made last year and taxes should be consistent and predictable.

Clause 54 (b)

764. Delete clause 54(b) because the three-day period proposed is most likely to pose a challenge to taxpayers on the need to comply within due time and is at variance with their other compliance obligations which come after a period of one month, which is the normal reporting period. This will most probably be administratively very taxing on the taxpayer who is already acting as an agent collecting these taxes on behalf of the Government.

Committee Observation

The Committee amended the provision to allow remission of withheld tax within 5 working days.

Clause 68- Export and Investment Promotion Levy

765. Delete this clause, Westminster observed that the Imposition of this levy has far-reaching implications on the manufacturing sector, especially on the products that the levy is being imposed on. The steel products, cement clinkers, and paper products are raw materials used in the manufacture of steel, cement, and paper and packaging products. It is not clear the criteria that were used in picking these products yet there are many products such as the glass industry that use 100% raw materials that are sourced locally. Additionally, this levy goes against the very protocol that created the East Africa Community Customs Union. There are better methods of protecting local industries against unfair trade practices if that was the intention of this levy. The additional challenge that might be faced with the introduction of this levy is the likelihood of industries shifting their base from Kenya to the other partner states unless the levy is uniform across the partner states. By imposing this levy, we have made ourselves as a country, uncompetitive. A national conversation on the justification and reasonableness of this levy is very critical.

Committee Observation

The introduction of the export and investment promotion levy is aimed at boosting local manufacturing, promote exports, promote the value chain and create more jobs in the country by providing aggregation centers in the counties and therefore the Committee rejected this proposal.

3.142 KENYATTA MARKET- MOSES WENANI

766. The association supports Clause 76 of the Finance Bill which proposes a 3% Housing levy on NHDF this is because it will create many jobs in the villages and the towns in Kenya and provide mortgages for common Mwananchi like Mama mbogas and market traders. The organization also supports the bill because it will enable them to enjoy better housing benefits.

3.143 VIONGOZI WA KIAMBU

Clause (28)(a)

767. Delete Clause 28 (a) that seeks to increase VAT on petroleum products from 8% to 16% noting that the cost of Petroleum is already high, increasing more taxes on the same is not only illogical but also retrogressive as far as the development agenda is concerned in this county.

Committee observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

Clause 76

768. Delete clause 76, because it will replace the freedom of a citizen to prioritize on how to spend hard worn salary.

Committee observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 43(b)(iii)

769. Delete Clause 43(b)(iii) on excise duty on the transfer of money by cellular phone from 12% to 15%. The burden of the additional 3% will be pushed to the consumer of the service. In addition, this will be retrogressive as far as the cost of business is concerned. Eventually, this will also lead to increased costs of goods and services to the consumers.

Committee Observations

The proposal was rejected by the Committee. This item has been harmonized with paragraphs (I) and (ii) at fifteen percent.

3.144 FEDERATION OF PUBLIC TRANSPORT SECTOR

Clause (28)(a)

770. Delete Clause 28 to retain the initial rate of 8% of the VAT on fuel because an increase will push PSV operators out of business with the Kenyan shilling continuing to depreciate, it means that the fuel prices will continue to increase. Furthermore, the operators will be forced to pass the burden to the passengers by adjusting fares upwards.

Committee observation

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal.

3.145 MUSICIAN LOBY GROUP

Clause (76)

771. The Musician Lobby Group supports the proposed 3% Housing Levy proposed on the Finance Bill because they believe it will provide musicians and actors by providing them with an opportunity to own homes. The organization also gives credence to the housing bill because it will contribute to the growth and development of the music industry by fostering creativity and providing professionalization.

Committee Recommendation

The Committee acknowledged the support for this provision. The Committee found it fit to amend the Housing Levy from 3 percent to 1.5 percent

3.146 ASHFORD PARTNERS

Clause 33 – The First Schedule to the Value-Added Tax

772. Amend the First Schedule of the VAT Act to include the exemption to cater for taxable goods, inputs and raw materials imported or locally purchased by a company that is engaged in manufacturing because it will ensure that a manufacturer looking to invest amounts above ten billion shillings will be supported in terms of cashflow where they would otherwise be required to fund the VAT element as well and strain working capital requirements.

Committee Observation

The proposal was accepted by the Committee as an incentive to the manufacturing sector.

New Clause 17A

773. Amend the Bill by inserting the following new clause immediately after clause 17

17A. Section 28A of the Income Tax Act is amended in –

(a) in paragraph (b), by inserting the words “or other manufacturing activities including refining” immediately after the words “human vaccines”; and

(b) by inserting the word “and” at the end of the paragraph

Committee Observation.

The proposal was accepted by the Committee to insert the words manufacturing activities including refining.

New Clause 21A

774. Amend by inserting the following new clause immediately after clause 21—
21A. The Income Tax Act is amended in section 133(6), by deleting the expression “31st December, 2023” and substituting therefor the expression “31st December, 2024.”

Committee observation

The proposal was accepted by the committee.

Clause 23

775. Amend 23— (a) in paragraph (b), by inserting the following new item immediately after the item (i)— (a) in paragraph (f), insert the words “refining or” immediately after the words “means the” appearing in the definition of “manufacture”. (b) in paragraph (c), by deleting the proposed new paragraph (1B)(b).

Committee Observation

The proposal was accepted by the Committee in line with the amendments under clause 33.

Clause 33 (a)

776. Amend clause 33 to amend the First Schedule to the VAT Act in paragraph 145 to classify as exempt "Taxable goods, inputs and raw materials imported or locally purchased by a company which is engaged in the manufacturing"

Committee Observation.

The proposal was accepted to extend the definition of manufacturing to include refining activities was accepted.

Clause 33(b)

777. Amend clause 33 (b) by amending Part II of the First Schedule on exempt services to extend it to services procured by manufacturers of human vaccines so that all taxable services in the manufacture of human vaccines are exempt.

Committee observation.

The proposal was accepted to exempt services purchased in the manufacture of human vaccines.

Clause 35

778. The organization proposed to amend the statutory timeline within which one must remit any withholding tax deducted to be within twenty-four hours after the deduction is made which is currently payable on or before the twentieth day of the month in which the deduction was made. This will remit withholding tax and exert administrative pressure on the taxpayers. Furthermore, taxpayers will be forced to monitor their transactions daily, and remit withholding tax on qualifying transactions.

Committee observation

The Committee has observed the difficulty that may be faced by companies in complying with 24 hours and has increased the time to five working days.

Clause 54

779. The institution proposed the amendment by deletion of the Tax Procedure Act which requires taxpayers to pay withholding VAT within 3 days. This is because it will pose a challenge in terms of VAT compliance as taxpayers will be subjected to a timeline different from the monthly reporting that is normally done. In addition, it will pose a great risk to the Government's intention to grow the manufacturing sector.

Committee observation

This proposal was rejected by the committee however the Committee amended it to allow remission of withheld tax within three to 5 working days.

Clause 71

780. Amend in clause 71 by — (a) in paragraph (a), by inserting the following new items—
(iia) by inserting the following new paragraph immediately after paragraph(xv)—

(xva) any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation.

(iiib) in paragraph (xxvc)(b), by inserting the words “or other manufacturing activities including refining” immediately after the words “human vaccines”; (iiic) in paragraph (xxvc), by adding the words “or the Cabinet Secretary responsible for matters relating to manufacturing, as the case may be” after the words “Cabinet Secretary for health”.

(b) in paragraph (b), by inserting the following new items immediately after item (ii) — (iia) in paragraph (viic) (b), by inserting the words “or other manufacturing activities including refining” immediately after the words “human vaccines”; (iib) in paragraph (viic), by adding the words “or the Cabinet Secretary responsible for matters relating to manufacturing” immediately after the words “Cabinet Secretary for health”

(c) In item (iv) of paragraph (b), by adding the following new item immediately after item (viii)—
(ix) Any other aircraft spare parts including aircraft engines imported by aircraft operators or persons engaged in the business of aircraft maintenance upon recommendation by the competent authority responsible for civil aviation.

Committee Observation.

The Committee accepted the proposals and noted that this is an extension of the incentives for companies manufacturing human vaccines.

3.147 TATU CITY

Clause 23(c) (b)

781. Amend Clause 23(c) (b) because the SEZ entities are subject to a 10% corporate TAX and considering the large capital expenditures invested in SEZ, very few entities can be profitable and capable of paying and corporate tax within the first 10 years of their operations. Therefore the committee was informed that zero rating inputs will encourage foreign direct investment (FDI) inflows while bringing in foreign expertise, and intellectual property. Additionally, exemption on payment of Pay As You Earn by newly registered Business Process Outsourcing (BPO) will reduce the labor costs for the companies thereby allowing companies to employ more and create the much-needed sustainable employment opportunities within the country

Committee Observation

To avoid discrimination the Committee noted that individuals can invest in any part of the country and qualify for the investment deduction. This proposal was rejected. The Committee opted to delete this provision.

3.148 EABX

New Proposal

782. Amend Section 3 (2) (i) of the Income Tax Act to read as follows: “*gains from financial derivatives, excluding financial derivatives traded on any securities exchange licensed by the Capital Markets Authority.*” Tax waivers should not be granted only to specific commercial institutions at the exclusion of all other duly licensed institutions. This is inconsistent with existing provisions in the Income Tax Act which exempt any securities exchange licensed by the Capital Markets Authority. The granting of exemptions to licensed securities exchanges was made to support the deepening of the capital and financial markets. The proposal was not exclusive to a particular exchange but to cater to the Capital Markets Master Plan in line with Vision 2030 that sought to provide for the introduction of new exchanges offering a diversified pool of securities

Committee Observation

The Committee rejected the proposal and noted that the proposal was not contained in the present Finance Bill.

3.149 NAKURU DROP-IN CENTRE

New Proposal

783. They propose an excise duty rate be increased because alcohol and tobacco products are causing catastrophic deaths and injuries in Nakuru County. Excessive alcohol use leads to the development of chronic diseases and other major medical problems. They further informed the Committee that in the justifications of the memorandum arguments that have informed this component of the finance bill to the effect that inflation adjustment contributes to increasing the cost of living are not only misleading but also empirically unsound. Inflation adjustments to the excise taxes have a very limited effect on consumers. The prevalence of consumption of these products is low among the broader Kenyan population and therefore these taxes do not affect the cost of living for most Kenyans.

Committee Observation

The Committee observed that the tobacco and alcohol industry taxes have been increased every year and therefore it is good to give them to give those industries a reprieve and further to reduce the consumption of illicit liquor. Therefore, the committee rejects the proposal.

3.150 KENYA NATIONAL CHAMBER OF COMMERCE

Clause 2(a)

784. Delete Clause 2 (a) on the definition of “winnings”. The proposal to deduct stakes from the amounts won will mean that even the stakes will be taxed. This is set to have a devastating blow to the gaming sector as it will make local gaming unattractive compared to offshore gaming.

Committee Observation.

The Committee accepted this proposal but recommended an amendment further on the definition of winnings” to mean the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act deducting the amount staked or wagered in that particular transaction.” This bars the law from deducting the previous amount invested.

Clause 10

785. Delete Clause 10 that seeks to amend Section (12F) (1) & (4) that introduce Digital Asset Tax (DAT) because \by taxing the turnover rather than the gains, the tax is likely to be a disincentive for persons seeking to engage in digital asset trading. Further, the requirement to remit the tax within 24 hours after making the deduction is administratively onerous.

Committee Observation

The Committee observed that the rationale for gross turnover at 3% is to make it easy for trading platforms to comply. If this was taxed at gain the Authority appreciates the difficulty that trading platforms would have to isolate gains made by millions of traders. Further, the Committee proposed to Amend the remission of With Holding tax to 5 Working Days. This proposal to delete the Clause was rejected.

Clause 76

786. Delete clause 76 on deductions to the National Housing Development Fund, this is because the employer contributions will increase the cost of employment and therefore likely to lead to loss of job opportunities. In addition, employee contributions will lead to reduced net income in the face of high inflation rates and high costs of living. Alternatively, it will be useful to define an employee for purposes of this fund and exempt those already with houses and foreign nationals on assignments in Kenya or even make it a voluntary contribution.

Committee Observation.

The Committee rejected the proposal to delete Clause 76 which seeks to support the Government’s affordable housing scheme and create employment for the youth. Further, the Committee amended the proposal by reducing the rate from 3% to 1.5% and increasing the remittance period to the 20th of the following month after the deduction.

Clause 12 (b) (i)

787. Delete clause 12 (b) (i) that seeks expressly include club joining and subscription fees as a benefit taxable on the employee, where the same has been taxed on the employer. If the proposal is enacted as is, the benefit will not be taxable on either the employee or the employer since deletion of Section 16(2)(a)(v) means it cannot be disallowed for corporation tax.

Committee Observation.

The Committee considered the proposal by KIBOS and rejects the proposal in the Bill. Therefore, the club fees and subscriptions will be allowable deductions.

Clause 23 (c) (b)

788. Delete Clause 23 (c) (b) because companies in sectors such as agriculture or mining may no longer be in a position to access the accelerated Investment allowance should this proposal be enacted. The proposal may disincentivize investors, especially in the infrastructure space, where projects, due to their nature, can only be located outside the counties of Nairobi and Mombasa.

Committee Observation.

Individuals can invest in any part of the country and qualify for the investment deduction. The Committee accepted the proposal to delete this Clause.

Clause 20(c)

789. Delete clause 20 (c) because requiring WHT to be remitted to the Commissioner within twenty-four hours will increase the compliance cost and administrative burden will increase for both taxpayers and the Kenya Revenue Authority, which contradicts the canon of convenience and economy. Despite the pressing need to urgently collect revenue, the Government's proposal to collect WHT within twenty-four hours is an extreme approach that may be difficult to implement effectively without substantial investment by taxpayers.

Committee Observation

This proposal was rejected by the Committee. The committee did take note of this proposal and made a recommendation to amend the time frame to five working days to harmonize the Withholding tax with other rates.

Clause 28

790. Delete clause 28 because it seeks to increase VAT on fuel to 16% this will have a significant effect on the price of basic commodities and thus raise the cost of living

Committee Observation

The existing VAT rates were not standard and thus the Committee intended to harmonize the rate to 16% including for petroleum products. With the suppliers of petroleum products claiming input tax at the general rate of 16%, the government has been sharing the burden of the input tax with the businesses by subsidizing the difference between the general rate (16%) and the preferential rate (8%). While ordinarily, one would expect that the businesses pay VAT on the markup, this has not been the case. The businesses have been in a perpetual credit position and not paying VAT to the Exchequer. This is an indicator that the input at 16% is significant enough to eat into their output tax payable. The Committee rejected this proposal

Clause 34 (a)(vi)

791. Delete Clause 34 (a)(vi) that reclassify the exportation of services from standard rated to exempt status. In 2022, the Finance Act moved the services from exempt to standard-rated. While the proposal provides clarity on the VAT treatment for exported services, including BPOs, any input VAT cost

incurred by the entity exporting the services outside Kenya will become a cost. This will mean that the cost of doing business for such entities will increase, effectively making Kenya unattractive to investors in such service companies.

Committee Observation

The Committee agreed to this proposal with respect to the exportation of taxable services and business process outsourcing. The Committee retained the item at zero rate because the exporters of taxable services will not be able to claim credit for VAT.

Clause 41 (1)

792. Delete Clause 41 (1) that proposes remittance by a bookmaker of excise duty on betting and gaming through a platform or other medium within 24 hours of the closure of transactions of the day. This may lead to additional administrative costs and may require the deployment of additional resources to meet tight deadlines.

Committee Observation

This Proposal was rejected by the Committee. The Committee observed that the remittance of betting taxes within twenty-four hours had been tried and tested and was already working effectively.

Clause 20 (b)

793. Delete clause 20 (b) that proposes to compel property agents who receive and collect rental income on behalf of property owners to remit WHT to the Commissioner within twenty-four hours if they have been appointed to be withholding tax agents. The proposal to remit taxes within twenty-four hours may be a huge burden on rental agents due to the increased administrative burden of daily filings and payments.

Committee Observation.

This Proposal was rejected by the Committee however the committee did acknowledge this submission and amended the remission of With Holding Tax to the Commissioner from twenty-four hours to five working days.

3.151 KENYA WINE AGENCIES LTD

Clause 43

794. Delete First Schedule part II (b)(x) because alcohol industry players are guided by the ABAK marketing code which promotes responsible alcohol advertising. Local media stations are also governed by the programming code to be advertised during the watershed period.

Committee Observation.

This proposal was rejected as the committee observed discouraging the advertisement of harmful content related to alcoholic beverages and gambling.

Clause 54

795. Delete clause 54 because it will create an unfavorable operating environment for investors that have invested more than KSh.3 billion. Most investors have commercial loans to service the proposed change will unfortunately reduce the cash flow of the investors.

Committee Observation

This proposal to delete the Clause was rejected by the Committee. However, the Committee took note of the submission and amended it to allow remission of withheld tax within 5 working days.

New Proposal

796. Amend the Bill and introduce a new clause that provides: ‘the *Special Economic Zone Act* is amended by amending section (6) (b) - by deleting the word ‘Kenya’ and substituting therefor the words ‘custom territory’. The amendment will spur the growth of the Special Economic Zones in Kenya. The proposal will in turn create employment and allow back linkages to the local agricultural sector. In addition, the proposal will enhance Kenya’s manufacturing contribution to the GDP.

Committee Observation

This proposal was accepted as this will attract more FDI and create employment

3.152 PRESBYTERIAN CHURCH EAST AFRICA

Clause 28

797. Delete clause 28 because increasing the VAT on fuel to 16% will have significant effects on the cost of living.

Committee Observations

The Committee acknowledged this proposal but also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. This proposal was rejected.

Clause 2

798. Delete clause on the definition of the person because it seeks to expand the definition to the extent that a person may be made responsible for tax obligations of their relatives

Committee Observations

The definition of the word ‘person’ is already defined under the Tax Procedures Act, of 2015. The Committee accepted this proposal.

Clause 20.

799. Delete clause 20 because the requirement to make returns within 24 hours will result in high compliance challenges considering the timings of rental income collection are different.

Committee Observations.

The Committee took note of the proposal and amended the proposal from 24 hours to five working days. However, the proposal to delete the Clause was rejected.

Clause 76

800. Amend clause 76 because it invades the private space of the citizens and therefore the provision should be amended to make it voluntary.

Committee Observation

The Committee rejected the proposal however it took note of the submission and further amended the proposal by reducing the rate from 3% to 1.5%.

3.153 DR. ESTHER M. MUIRURI

The Committee received submissions from Esther Muiruri responding to the following:

Clause 76

801. Delete clause 76 of the Bill because it is an ill-conceived, unworkable, failure-prone idea that will lead to recriminations down the line. It is not a National Chama as represented by P.s Charles Hinga since Chama is usually voluntary; contributions and their frequency is determined by the members; no criteria for House allocations; and the proposal doesn't define the terms 'return on fund policy'. The proposal should be put on hold until all the lingering questions that the government officials are struggling to respond to are well addressed and canvassed through public consultations.

Committee Observation

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

Clause 28

802. Delete clause 28 of the Bill because of increasing VAT on petroleum products and natural gases from 8% to 16%, simply because of its dire knock-on effects on the cost of living in general. If passed, this proposal will send many Kenyans further into poverty, and that will have a domino effect on any other plans that this Government may have to grow the economy. It is insensitive, ignores our present realities, and is simply unfair at such a time at this.

Committee Observations

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal

3.154 NANOVAS INTERNATIONAL

Clauses 2 and 43

803. Delete clause 2(a) on the definition of winnings to retain the current definition of “*winnings*” because the proposed taxation on the stake has an effect of taxing the capital/ investment by a punter who invests with the intention of making a gain should they win, which contrary to the intention of income tax that seeks to tax ‘gains or profits’ and not capital. This discriminates against taxpayers in the betting and gaming sector as there is no other sector where taxpayers’ capital is subjected to tax. In addition, the proposal to have an excise duty of 20% will be more than double the current rate of excise duty on betting, gaming, lottery and prize competition. The increase from 7.5% to 20%, which is a steep 266% increase from the current rate. The impact will be that the returns on betting and gaming as well as the total market size will be greatly reduced, as it will be less lucrative for players to engage in such activities.

Committee Observations

The proposal on Clause 2(a) was accepted by the Committee. Further, an amendment was made where the definition to include “winnings” means the payout from a betting, gaming, lottery, prize competition, gambling or similar transaction under the Betting, Lotteries and Gaming Act deducting the amount staked or wagered in that particular transaction.” This bars the law from deducting the previous amounts staked.

On Clause 43 the Committee rejected the proposal and noted that the increase was too steep and as such agreed to the reduced rate from 20% to 12.5%.

Clause 20

804. Delete clause 20(b) because requiring remission of withholding tax within twenty-four hours will be onerous and administratively too costly.

Committee Observations

The Committee rejected the proposal. However, an amendment was made from 24 hours to five working days

3.155 D-BASF

Clause 20(b)

805. Delete Clause 20(b) because it will create a significant administrative burden that does not have any benefit for businesses thereby affecting them. Additional compliance costs mean less money back to the shareholders, therefore less money invested in the future and inadequate working capital.

Committee Observations

This proposal was rejected by the Committee. However, the Committee amended to amend the time for remitting to five working days.

Clause 24

806. Delete clause 24 because this proposal targets a limited number of individuals and is unlikely to have a major effect on PAYE collection given the small population who earn more than Ks. 500,000/- a month. The more sustainable solution would be to enlarge the tax base and bring in more taxpayers. As opposed to targeting only those in formal employment

Committee Observation

The Committee rejected this proposal and further recommended that the PAYE tax bands be amended to include: Ksh500,000- Ksh800,000, 32.5% per month, above Ksh800,000 35% per month. This will enable the government to raise revenue, enhance fairness and equity, encourage investors to invest in the country and enhance local value addition thus creating job opportunities for the citizens to support local manufacturing, including a 15% repatriation tax rate and increase compliance by agents.

Clause 33

807. Delete paragraphs 148 and 149 because this will increase in the price of pest control products, making them further out of reach of the farmers, and contradicts the government agenda to support Agriculture as a pillar of Vision 2030.

Committee Observations

Paragraphs 148 and 149 to reclassify from zero-rated to exempt, will increase the fertilizer and pest control costs which will have a significant impact on farmers. Therefore, the Committee accepted and resolved to retain these items at zero rate.

Clause 28

808. Delete Clause 28; because imposing an additional 8% on fuel will increase the cost of goods, meaning increased prices of manufacturing raw materials, in turn making locally produced products more expensive and harming the manufacturing industry and increasing the cost of living.

Committee Observations

The proposal was rejected. The Committee noted that the differential VAT on fuel products means that the suppliers are constantly in a VAT credit position, which leads to huge government expenditure.

Clause 76

809. Delete Clause 76 on Housing Levy because the imposition of this tax/initiative will increase the cost of employment, which will in turn lead to the loss of jobs as employers try to manage unpredictable and ballooning wage costs.

Committee observations

The Committee amended clause 76 to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%.

3.156 KOKO

810. Amend paragraph 66A of the First Schedule to the VAT, 2013 by deleting '7321.11.00' just after the words 'HS' and replacing it with '7321.12.00' because the Finance Act 2022 exempted Bioethanol vapor(BEV) Stoves classified under HS code 7321.11.00 (cooking appliances and plate warmers for liquid fuel) from VAT. However, this exemption was not implemented due to the reclassification of BEV Stoves from HS Code 7321.11.00 to 7321.12.00.

Committee Observation

The proposal was accepted, and an amendment was proposed to include the proposer HS Code.

Amend Clause 71

811. Amend Part A of the First Second schedule to the Miscellaneous Fees and Levies Act, 2016 by inserting the following new paragraphs immediately after (xxviii)-

(xxix) '*the supply of denature ethanol of tariff number 2207.20.00;*' and (xxx) '*Bioethanol vapor Stoves classified under HS Code 7321.12.00(cooking appliances and plate warmers for liquid fuel).*'

Committee Observations

The Committee accepted the proposal and further accepted comments to include the supply of denatured ethanol of tariff number 2207.20.00 and bioethanol vapor stoves classified under HS Code 7321.12.00 to promote clean energy.

812. Amend Part B of the Second Schedule to the Miscellaneous Fees and Levies Act by inserting the following new paragraphs immediately after paragraph (xiii)-

xiv '*the supply of denatured ethanol of tariff 2207.20.00;*' and xv '*Bioethanol vapor (BEV) Stoves classified under HS Code 7321.12.00(cooking appliances and plate warmers for liquid fuel).*'

Committee Observations

The Committee accepted the proposal in support of green energy.

3.157 ILLICIT ALCOHOL PREVENTION TASKFORCE

New Proposal

813. Amend the Finance Bill 2023 in the Excise Duty Act to provide that Excise on alcoholic beverages should be paid in advance. This is to prevent the trade of illicit alcohol.

Committee Observation

The Committee accepted the proposal and noted that illicit alcohol was a national menace.

3.158 DEMOCRACY TRUST FUND

Clause 2

814. Amend Clause 2(b) by deleting paragraph (h) because the proposal to tax crowd-funding is unfair since crowd-funding is for social causes which are not business.

Committee Observation

The Committee rejected this proposal and made further amendments to clarify the item on crowdfunding.

3.159 ICHIBAN FOR GREEN PLANET KENYA

Clause 4

815. Delete Clause 4

Committee Observation

The Committee rejected the proposal but made further recommended that clause 4 of the Bill be amended in sub-clause (a) in the proposed new paragraph (ii) by deleting the period of three years and inserting five years.

3.160 I.C LAW LLP

Clause 4

816. Delete Clause 4 because the proposal is unfair to taxpayers as foreign exchange losses are caused by macroeconomic factors which are beyond the taxpayers' control. Additionally, this proposal will impose a huge administrative burden on the part of taxpayers as companies will need to track foreign exchange losses per year of income as they get realized.

Committee Observation

The Committee rejected the proposal and further amended the provision to provide the period of claiming foreign exchange losses from three years to five years.

3.161 SANABIL

817. Amend clause 43(a)— (a) in item (ii), by deleting the words “Imported white chocolate of heading 1704, chocolate and other food preparations containing cocoa of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00” and substituting therefor the words “Imported white chocolate of heading 1704, and imported chocolate and other imported food preparations containing cocoa of tariff nos. 1806.31.00, 1806.32.00 and 1806.90.00”.

(b) by inserting the following new items immediately after item (v) -(va) by deleting the rate of excise duty of “25%” in respect of the tariff description “Imported Glass bottles (excluding imported glass bottles for packaging of pharmaceutical products)” and substituting therefor the rate of excise duty of “35%”.

(vb) by deleting the excise rate of “10%” in respect of the tariff description “Imported Alkyd” and substituting therefore the excise rate of “20%”.

(VC) by deleting the excise rate of “10%” in respect of the tariff description “Imported Unsaturated polyester” and substituting therefore the excise rate of “20%”.

(vd) by deleting the excise rate of “10%” in respect of the tariff description “Imported Emulsion VAM” and substituting therefore the excise rate of “20%”.

(ve) by deleting the excise rate of “10%” in respect of the tariff description “Imported Emulsion - Styrene Acrylic” and substituting therefore the excise rate of “20%”.

(vf) by deleting the excise rate of “10%” in respect of the tariff description “Imported Homopolymers” and substituting, therefore, the excise rate of “20%”.

(vg) by deleting the excise rate of “10%” in respect of the tariff description “Imported Emulsion B.A.M.” and substituting therefore the excise rate of “20%”.

(c) in the table appearing in paragraph (vi), by adding the following new items—

Description	Rate of excise duty
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Imported cartons, boxes and cases of corrugated paper or paper board and imported folding cartons, boxes and case of non-corrugated paper or paper board and imported skillets, free-hinge lid packets of tariff heading 4819.10.00, 4819.20.10, 4819.20.90 but excluding	
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companies gazetted under
the duty remission scheme 25%

Imported plates of plastic of tariff heading 3919.90.90, 3920.10.90, 3920.43.90, 3920.62.90, 3921.19.90
25% Imported paper or paper board, labels of all kinds whether or not printed of tariff heading 4821.10.00,
4821.90. 25%

Committee observation

The proposals were accepted by the Committee.

3.162 EMAIL SUBMISSIONS

The Departmental Committee on Finance and National Planning Committee acknowledge submissions from the following stakeholders objecting to the introduction of the Housing Levy

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Committee Observations on the Clause

The proposal was amended to make it a levy as opposed to a mandatory contribution. Further, the rate was reduced from 3% to 1.5%

The Departmental Committee on Finance and National Planning Committee acknowledge submissions from the following stakeholders supporting the introduction of the Housing Levy on the account that it will create jobs

1. Ibrahim ibra.mutai@gmail.com
2. Faith C faithcwanjiku@gmail.com

Committee Observations on the Clause

The proposal was amended to make it a levy as opposed to a mandatory contribution. Further the rate was reduced from 3% to 1.5%

The Departmental Committee on Finance and National Planning Committee acknowledge submissions from the following stakeholders opposing the introduction of the 16% VAT on fuel.

1. Ezraha ezraha89@gmail.com
2. Poleh opolehakatch4@gmail.com
3. Alex Akhudu akhudualex@yahoo.com
4. Dawson dawsonnyaga@gmail.com
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6. Isaac imurayak@gmail.com
7. Jadoung evansjakom73@gmail.com
8. Ely elijahmosioma10@gmail.com
9. Odenda frodenda@gmail.com

Committee Observations on the Clause

The Committee noted that the existing VAT rates were not standard and thus intended to harmonize the rate to 16% including for petroleum products. The Committee also agreed that the effect of the differential VAT on fuel led to petroleum distributors being in a constant credit position, thus leading to high expenditure for the Government. The Committee rejected their proposal

The Departmental Committee on Finance and National Planning Committee acknowledge submissions from the following stakeholders opposing the introduction of the rate of 35% payee on income above Kes. 500,000.

1. John Karanu kj.karanusp@gmail.com
2. Helen winfredkaara@gmail.com
3. Odenda frodenda@gmail.com

Committee observation on the Clause

The Committee considered the proposal however, it amended it as follows: Between 500,000 to 800,000 32.5% per month. Above 800,000 35% per month. This will enable government to raise more revenue.

The Departmental Committee on Finance and National Planning Committee acknowledges receipt of general submissions from the following stakeholders pertaining their rejection of the Bill in its entirety

1. Joel kamirujoel2000@gmail.com
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PART FOUR

5.0 COMMITTEE RECOMMENDATION

The Committee having reviewed the Finance Bill (*National Assembly Bill No. 14 of 2023*) recommends that the House approves the Bill with amendments.

SIGNED.....



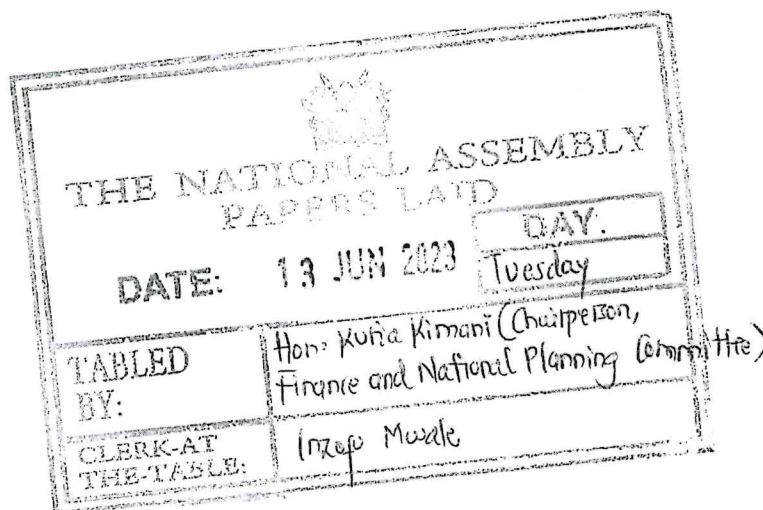
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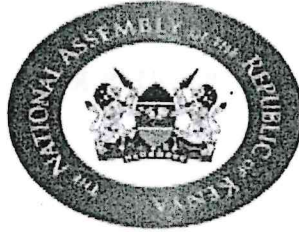
13th June, 2023

HON. CPA KURIA KIMANI, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING





THE NATIONAL ASSEMBLY
13TH PARLIAMENT - FIRST SESSION (2022)
COMMITTEE ON FINANCE & NATIONAL PLANNING
ADOPTION LIST

Date: Tuesday, 13th June, 2023

Venue: Enashipai Resort, Naivasha

AGENDA: Adoption of the Report on the Finance Bill, 2023

No.	NAME	SIGNATURE
1.	Hon. (CPA). Francis Kuria Kimani, MP - Chairperson	
2.	Hon. (Amb). Benjamin Kipkirui Langat, MP – Vice Chairperson	
3.	Hon. Dr. Adan Keynan Wehliye, MP	
4.	Hon. George Sunkuyia Risa, MP	
5.	Hon. (CPA) Joseph Maero Oyula, MP	
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